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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA

CONSOLIDATED PROVISIONAL FINAL REPORT

VOLUME I

Explanatory note

The consolidated provisional final report of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea has been prepared by the Secretariat in response to the request by the Preparatory Commission contained in the Statement of the Chairman of the Preparatory Commission (LOS/PCN/L.113/Rev.1). The consolidated provisional final report is issued in six volumes, as follows:

Volume I

Chapter I	Provisional final report of the Plenary.
Chapter II	Provisional report of Special Commission 1.
Chapter III	Provisional final report of Special Commission 2.
Chapter IV	Draft provisional report of Special Commission 3.
Chapter V	Provisional report of Special Commission 4.

Volume II

Documents of the Plenary.

Documents relevant to the implementation of resolution II; final draft rules of procedure for the organs of the Authority; final draft relationship agreements of the Authority; documents on the Finance Committee and on the administrative arrangements, structure and financial implications of the Authority.

Volume III

Documents of Special Commission 1.

Volume IV

Documents of Special Commission 2.

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Volume V

Documents of Special Commission 3.

Draft rules, regulations and procedures for the exploration and exploitation of polymetallic nodules in the Area and documents containing proposals for amendments submitted by various States and interest groups to these draft rules, regulations and procedures.

Volume VI

Documents of Special Commission 4.

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INTRODUCTION

1. Pursuant to resolution I, the Preparatory Commission shall remain in existence until the conclusion of the first session of the Assembly of the Authority; accordingly, the present report is of necessity provisional. It identifies the issues which remain pending. While reflecting the results achieved so far, this report should in no way be interpreted as precluding the further consideration of the pending issues before the Preparatory Commission.

2. The Third United Nations Conference on the Law of the Sea established by resolution I the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea and entrusted it with the task of preparing draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions. The functions of the Preparatory Commission were set out in the following paragraphs of resolution I:

> "5. The Commission shall:
>
> (a) prepare the provisional agenda for the first session of the Assembly and of the Council and, as appropriate, make recommendations relating to items thereon;
>
> (b) prepare draft rules of procedure of the Assembly and of the Council;
>
> (c) make recommendations concerning the budget for the first financial period of the Authority;
>
> (d) make recommendations concerning the relationship between the Authority and the United Nations and other international organizations;
>
> (e) make recommendations concerning the Secretariat of the Authority in accordance with the relevant provisions of the Convention;
>
> (f) undertake studies, as necessary, concerning the establishment of the headquarters of the Authority, and make recommendations relating thereto;
>
> (g) prepare draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions, including draft regulations concerning the financial management and the internal administration of the Authority;
>
> (h) exercise the powers and functions assigned to it by resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment;
>
> (i) undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area with a view to minimizing their difficulties and helping them to make the necessary

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economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the Authority thereon.

"...

"8. The Commission shall establish a special commission for the Enterprise and entrust to it the functions referred to in paragraph 12 of resolution II of the Third United Nations Conference on the Law of the Sea relating to preparatory investment. The special commission shall take all measures necessary for the early entry into effective operation of the Enterprise.

"9. The Commission shall establish a special commission on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area and entrust to it the functions referred to in paragraph 5 (i).

"10. The Commission shall prepare a report containing recommendations for submission to the meeting of the States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

"11. The Commission shall prepare a final report on all matters within its mandate, except as provided in paragraph 10, for the presentation to the Assembly at its first session. Any action which may be taken on the basis of the report must be in conformity with the provisions of the Convention concerning the powers and functions entrusted to the respective organs of the Authority."

3. In accordance with resolution I, paragraph 1, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea was to be convened once the Convention on the Law of the Sea was signed or acceded to by 50 States. At the conclusion of the Third United Nations Conference on the Law of the Sea, held from 6 to 10 December 1982, the Convention received 119 signatures. Since the required number of signatures had been obtained, the Preparatory Commission began its work in March 1983. Under the rules of procedure, membership of the Preparatory Commission is open to all States which have signed the Convention on the Law of the Sea or have acceded to it. Representatives of signatories of the Final Act of the Third United Nations Conference on the Law of the Sea may participate fully in the deliberations of the Preparatory Commission as observers but shall not be entitled to participate in the taking of decisions (see also para. 2 of resolution I).

4. The first session of the Preparatory Commission was held from 15 March to 8 April 1983, and the resumed first session from 15 August to 9 September 1983. These two sessions were primarily devoted to the consideration of administrative arrangements, namely the structure of the Preparatory Commission, the function of its organs and the election of officers. It was decided that the Preparatory Commission should consist of the Plenary as the principal organ and the following special commissions as its main organs enjoying equal status:

/...

(a) A special commission on the problems that could be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area; this Commission was entrusted with the functions referred to in paragraphs 5 (i) and 9 of resolution I;

(b) A special commission for the Enterprise, for the adoption of all measures necessary for the early entry into effective operation of the Enterprise; this Commission was entrusted with the functions referred to in paragraph 8 of resolution I and paragraph 12 of resolution II;

(c) A special commission for the preparation of rules, regulations and procedures for the exploration and exploitation of the Area (seabed mining code) (resolution I, para. 5 (g));

(d) A special commission for the Tribunal to prepare recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (resolution I, para. 10) (LOS/PCN/27, annex).

5. The functions assigned to the Plenary were:

(a) Preparation of rules, regulations and procedures on the administrative, financial, and budgetary matters pertaining to the various organs of the Authority (resolution I, para. 5 (g));

(b) Implementation of resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules (resolution I, para. 5 (h));

(c) Preparation, consideration and adoption of the final report referred to in paragraph 11 of resolution I incorporating therein the results of deliberations on all matters within its exclusive competence and on all matters within the competence of its special commissions and other subsidiary bodies as contained in the reports submitted to it by them for the presentation of the final report by the Chairman to the first session of the Assembly of the International Seabed Authority;

(d) The general conduct of business; coordination of work of the organs and subsidiary bodies; and upon the recommendation of the General Committee, all questions of organization of work;

(e) Presentation of the report of the Preparatory Commission through its Chairman on the arrangements for the establishment of the International Tribunal for the Law of the Sea to the meeting of States Parties convened for the purpose;

(f) All matters not specifically assigned to the special commissions or other subsidiary bodies.

6. A General Committee was established with the following functions:

(a) The General Committee shall act on behalf of the Preparatory Commission as the executive organ for the administration of resolution II;

/...

(b) The General Committee shall be the organ responsible for making recommendations to the Plenary on all questions of organizations of work (LOS/PCN/27, annex).

7. At the resumed first session the Preparatory Commission adopted its rules of procedure (LOS/PCN/28).

8. In the light of the complexity of the mandate assigned to the Plenary and owing to the fact that the issues related to the implementation of resolution II had been considered as a matter of high priority at the second session of the Preparatory Commission, it was found necessary that the work of the Plenary should be divided into three parts: organization of work of the Commission; implementation of resolution II; and preparation of draft agreements, rules and regulations and procedures.

9. The Preparatory Commission was empowered to establish such subsidiary bodies as necessary for the exercise of its functions and to determine their composition and competence (resolution I, para. 7). During the course of its work the Commission established two such bodies. First, it created in 1986 a Group of Technical Experts to determine whether the applications for registration as pioneer investors were in conformity with resolution II (LOS/PCN/L.41/Rev.1, annex). Secondly, in 1989 it established a Training Panel to make recommendations to the Preparatory Commission on the measures to be taken pursuant to the principles and policies established for the implementation of paragraph 12 (a) (ii) of resolution II regarding the training of personnel (LOS/PCN/SCN.2/L.6/Rev.1, LOS/PCN/SCN.2/L.7 and LOS/PCN/L.92).

10. The Draft Principles, Policies, Guidelines and Procedures for a Preparatory Commission Training Programme provided that the Training Panel would: (i) evaluate performance reports in the event that designated persons are selected for further training; (ii) keep the programme under review particularly with respect to established priorities, scheduling and financial implications, taking into account also the experience gained by both registered pioneer investors and trainees; and (iii) submit an annual progress report to the Preparatory Commission on the training provided, including information on all expenditure made under the programme.

11. On 30 August 1985 the Preparatory Commission adopted a declaration on the issue of unilateral legislation stating that:

> "(a) The only regime for exploration and exploitation of the Area and its resources is that established by the United Nations Convention on the Law of the Sea and related resolutions adopted by the Third United Nations Conference on the Law of the Sea.
>
> "(b) Any claim, agreement or action regarding the Area and its resources undertaken outside the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions shall not be recognized." (LOS/PCN/72)

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Chapter I

PROVISIONAL FINAL REPORT OF THE PLENARY*

A. Implementation of resolution II

12. Resolution II of the Third United Nations Conference on the Law of the Sea was adopted together with the Convention on the Law of the Sea on 30 April 1982. The intent of the resolution was to protect the substantial investments already made in the development of seabed mining technology, equipment and expertise. It was also recognized that there was a need to ensure that the Enterprise would be provided with the funds, technology and expertise necessary to enable it to keep pace with States and other entities. The Preparatory Commission was entrusted with the task of implementing resolution II, which embodied the regime for the protection of pioneer investment. This function was assigned to the Plenary of the Preparatory Commission (LOS/PCN/27). The General Committee acted on behalf of the Preparatory Commission as the executive organ for the administration of resolution II.

13. The Plenary began its work on the implementation of resolution II with the consideration of a set of draft rules for the registration of pioneer investors and draft rules on confidentiality, data and information (LOS/PCN/WP.16 and Corr.1). After the first reading of that document it was concluded that there were three principal issues to be addressed by the Plenary on resolution II. The first was the question of overlap of claims, the second related to the question of the Group of Technical Experts, in particular its nature, composition and function, and the third issue concerned the question of the confidentiality of data and information.

14. It was agreed that these issues were difficult to resolve but that it would be relatively easy to deal with both the issue of confidentiality of data and information and that of the Group of Technical Experts if a solution could be found to the question of overlapping claims (LOS/PCN/L.6).

15. Under resolution II applicants for pioneer investor status are required to ensure that areas in respect of which applications are made do not overlap one another. Any State which has signed the Convention and which is a prospective certifying State shall ensure, before making applications to the Commission, that areas in respect of which an application is made do not overlap one another. The States concerned shall resolve the conflicts by negotiations within a reasonable period. If these conflicts were not resolved by 1 March 1983, the prospective certifying States were to arrange for their submission to binding arbitration in accordance with UNCITRAL Arbitration Rules to commence not later than 1 May 1983 and to be completed by 1 December 1984.

16. Therefore, the first and by far the most important issue facing the Preparatory Commission with respect to the implementation of resolution II was

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* This chapter is a revised version of the report which originally appeared in document LOS/PCN/WP.52.

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the question of overlaps. At the second session of the Preparatory Commission (1984), the Chairman of the Preparatory Commission was requested to use his good offices to help the parties reach an agreement on resolving their conflicts of overlaps. At the summer meeting held at Geneva in 1984, an understanding on the procedure for conflict resolution among the first group of applicants for registration as pioneer investors - France, India, Japan and the Union of Soviet Socialist Republics - was reached. It should be noted that the Soviet Union had submitted its application in July 1983, India in January 1984, and both France and Japan in August 1984. According to the understanding it was stated, inter alia, that all applicants agreed to meet on 17 December 1984 to exchange lists of coordinates in order to ascertain if there were any overlaps between the areas claimed in the applications submitted to the Preparatory Commission for registration as pioneer investors. If any overlap of claims were to be found between two or more applicants, the conflict should be resolved through negotiations (LOS/PCN/L.8).

17. In accordance with that understanding, the four applicants met at Geneva on 17 December 1984 to exchange lists of coordinates of the areas claimed by them. It was discovered that overlaps existed between the application areas of Japan and the Soviet Union and between those of France and the Soviet Union. Those areas were all situated in the north-eastern part of the Pacific. India, whose application was in the Indian Ocean, had no conflict of overlaps with respect to its application area (LOS/PCN/L.19).

18. The three countries - France, Japan and the Soviet Union - held a series of meetings in order to resolve the conflicts of overlaps in the application areas (LOS/PCN/56). It was possible to resolve on a provisional basis the conflict of overlaps between Japan and the Soviet Union, but that between France and the Soviet Union proved difficult to resolve. It was difficult to find a solution which would meet all the conditions set out in paragraph 3 (a) of resolution II, which provides in part that "every application shall cover a total area which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations", a part of which being reserved for the International Seabed Authority.

19. A period of intense negotiations ensued. Meetings of the four applicants were held at Geneva, Tokyo and finally Arusha in February 1986. At the Arusha meeting the four applicants submitted a set of proposals which constituted what became known as the Arusha understanding. This understanding dealt with two significant issues: (i) the resolution of conflicts due to overlaps and (ii) the allocation of mine sites to the first group of applicants and the designation of reserved areas for the Authority (LOS/PCN/L.34). This understanding introduced, inter alia, two new elements into the pioneer investor regime - the idea of applying paragraph 1 (e) of resolution II at the time when an application was being registered (prior relinquishment of areas) and the notion of self-selection of the pioneer areas. It will be recalled that according to resolution II it was the Preparatory Commission and not the applicant which had to designate the part of the area to be reserved for the Authority and to allocate to the pioneer investor the pioneer area (resolution II, para. 3 (b)).

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20. The Chairman conducted consultations on this understanding with all the interested groups: the first group of applicants, the potential applicants, the Group of 10, representing the Group of 77, and the Group of 11, also known as the Friends of the Convention, as well as China. Finally, it was possible to put together an understanding which is contained in the statement on the implementation of resolution II of 11 September 1986 (LOS/PCN/L.41/Rev.1, annex).

21. That statement established the procedures and mechanisms essentially designed for the registration of the first group of applicants. It provided for the submission of revised applications by France, Japan and the Union of Soviet Socialist Republics and a timetable for meetings of the General Committee to consider those applications.

22. It also provided for the creation of a Group of Technical Experts. The function of this group was to determine whether an application was in conformity with resolution II and to submit a report on it to the General Committee. The General Committee was to consider the application taking into account the report of the Group of Experts.

23. The statement incorporated the elements already mentioned in respect of the Arusha understanding. Thus, an applicant that had practical problems in resolving its conflicts with respect to overlapping claims with potential applicants was entitled to make voluntary relinquishment of parts of the application areas simultaneously with its registration as a pioneer investor. The relinquished areas were to be reserved to form part of the application areas of potential applicants qualified to apply as pioneer investors under resolution II, paragraph 1 (a) (ii), until the Convention entered into force. Those applicants which did not have practical problems and did not make voluntary advance relinquishments of areas were deemed to have complied with the requirements of resolution II, paragraph 1 (e), upon registration, provided that the total pioneer area allocated to them did not exceed 75,000 sq. km. (ibid., para. 10).

24. With respect to the registration of India, the statement declared that:

> "Notwithstanding the foregoing the registration of India as a pioneer investor shall be made in conformity with resolution II. However, India, like other applicants, if it so wishes, will identify in its application area an area totalling 52,300 sq. km. for incorporation in the area of up to 150,000 sq. km. to be allocated to it as a pioneer area. The provisions on relinquishment in resolution II, paragraph 1 (e), shall apply to the allocated area" (ibid., para. 13 (3)).

25. As far as the exploration of a mine site for the Enterprise is concerned it stated that:

> "Notwithstanding the provisions of paragraph 12 (a) (i) of resolution II, the first group of applicants will assist the Preparatory Commission and the Authority in the exploration of a mine site for the first operation of the Enterprise and in preparing a plan of work in respect of such a mine site. The conditions and extent of this assistance

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will be discussed and agreed to following registration, applying mutatis mutandis the provisions of paragraph 7 (c) of resolution II" (ibid., para. 14).

26. The interests of potential applicants were taken into account in that the statement provided for similar treatment to be given to potential applicants as that given to the first group of applicants, provided that potential applicants assumed similar obligations to those of the first group of applicants, and had submitted their applications before the entry into force of the Convention (LOS/PCN/L.41/Rev.1, ibid., para. 15).

27. The procedures and mechanisms outlined in the understanding were devised in order to overcome practical difficulties in the implementation of resolution II and to facilitate the early registration of the first group of applicants as soon as possible.

28. The procedures and mechanisms were essentially designed for the registration of the first group of applicants as pioneer investors under resolution II and constituted an integrated package to be implemented as a whole. They shall be respected by all concerned.

29. It should be noted that the procedures and mechanisms outlined in the understanding "shall not be construed as setting a precedent for the implementation of the regime for seabed mining under the Convention, nor do they purport to alter or amend that regime in any way" (ibid., para. 18).

30. It was also agreed that any developing State that has signed the Convention or any State enterprise or natural or juridical person that possesses the nationality of such State or is effectively controlled by it or its nationals, or any group of the foregoing, shall have the right to apply as pioneer investor under resolution II, until the Convention enters into force. Likewise, a group of Socialist States of Eastern Europe or a group of their State enterprises was also given the right to apply for one mine site as pioneer investors under resolution II until the Convention enters into force.

31. It will be recalled that in order to qualify as a pioneer investor, the State or entity must have expended before 1 January 1983 an amount equivalent to at least US$ 30 million in pioneer activities, no less than 10 per cent of which had to be expended in the location, survey and evaluation of the application area (resolution II, para. 1 (a)). Under paragraph 1 (a) (iii) of resolution II, a developing country which has signed the Convention must have met this requirement before 1 January 1985.

32. At the summer meeting in 1987, the delegations of Belgium, Canada, Italy, the Netherlands and the Union of Soviet Socialist Republics informed the Preparatory Commission of the meetings between the representatives of their countries held after the fifth session between April and July 1987, with a view to settling practical problems in connection with deep seabed areas which their countries had applied for or might apply for in the future. After four rounds of meetings were held, it was possible to achieve a comprehensive settlement of practical problems (LOS/PCN/90). The delegations of the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany welcomed the

successful outcome of these negotiations on practical problems and associated themselves with that settlement (LOS/PCN/92 and LOS/PCN/93). In the light of the settlement, France, Japan and the USSR revised their applications.

33. This development ensured that all the applications for pioneer investment status would be considered by the Group of Technical Experts and the General Committee. The reports of the Group of Experts on the applications of India, France, Japan and the Union of Soviet Socialist Republics are found respectively in documents LOS/PCN/BUR/R.1, LOS/PCN/BUR/R.2, LOS/PCN/BUR/R.3 and LOS/PCN/BUR/R.4.

34. The General Committee, acting as the executive body of the Preparatory Commission, registered as pioneer investors first India on 17 August 1987, and then IFREMER/AFERNOD (France), DORD (Japan) and Yuzhmorgeologiya (Union of Soviet Socialist Republics) on 17 December 1987 (LOS/PCN/94, LOS/PCN/97, LOS/PCN/98 and LOS/PCN/99). The General Committee also designated a part of the application areas to be reserved for the conduct of activities by the Authority in the Area through the Enterprise or in association with developing States.

35. Following the registration of the four pioneer investors in 1987, the Chairman of the Preparatory Commission during the course of the sixth session (1988) undertook consultations on the modalities of the implementation of the obligations of the registered pioneer investors and their certifying States. An informal consultative group was formed to deal with these issues which related, inter alia, to the following matters:

(a) Exploration in the area reserved for activities by the Authority (resolution II, para. 12 (a) (i), and LOS/PCN/L.41/Rev.1, annex, para. 14);

(b) Annual fixed fee of US$ 1 million (resolution II, para. 7 (b));

(c) Training of personnel (resolution II, para. 12 (a) (ii));

(d) Registration fee (resolution II, para. 7 (a));

(e) Transfer of technology (resolution II, para. 12 (a) (iii));

(f) Periodic expenditures (resolution II, para. 7 (c));

(g) Funds for the Enterprise (resolution II, para. 12 (b) (i));

(h) Periodic reports (resolution II, paras. 5 (b) and 12 (b) (ii)) (LOS/PCN/L.67/Rev.1).

36. These consultations continued during the summer meeting (1988) of the Preparatory Commission. At the seventh session of the Commission in 1989, these consultations were resumed. It then became apparent that certain matters relating to the discharge of obligations, in particular an agreement on a programme of exploration, required the assistance of the Group of Technical Experts.

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37. Accordingly the Group of Technical Experts was convened to prepare a comprehensive exploration plan from the first stages of exploration to the stage at which a decision for exploitation could be taken. The Group was also requested to assist the Preparatory Commission in matters relating to the training of personnel (LOS/PCN/L.77).

38. The reports of the Group of Technical Experts provided the basis for resolving the difficulties relating to the implementation of the obligations of the registered pioneer investors and their certifying States (LOS/PCN/BUR/R.5 and LOS/PCN/BUR/R.6). In the light of these reports of the Group of Technical Experts and after further consultations, the Chairman submitted a revised version, dated 31 August 1989, of the paper he had already informally distributed on 3 March 1989. At the eighth session of the Preparatory Commission, held at Kingston in 1990, the issue was extensively discussed and substantial progress was made. During the summer meeting the General Committee, on behalf of the Preparatory Commission, unanimously adopted the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex).

39. The four registered pioneer investors agreed to provide training pursuant to paragraph 12 (a) (ii) of resolution II in conformity with the training programme approved by the Preparatory Commission, taking into account the report of the Group of Technical Experts (LOS/PCN/BUR/R.6). The cost of such training was to be borne by the pioneer investors and shall be free of costs to the Preparatory Commission.

40. With respect to exploration, the registered pioneer investors (France, Japan and the Soviet Union) undertook to carry out free of cost the preparatory work and stage I of the plan for exploration contained in the report of the Group of Technical Experts (LOS/PCN/BUR/R.5).

41. As regards stage II of the exploration plan, it was understood that "this will be agreed upon following the completion of stage I and the review of the results obtained, and taking into account the decision of any pioneer investor to undertake stage II of the plan of exploration in the areas allocated to it. The terms and conditions for such further exploration shall be agreed upon in accordance with resolution II, paragraph 12 (a) (i)" (LOS/PCN/L.87, annex, para. 9).

42. Once these three pioneer investors had satisfactorily complied with the obligations concerning training and exploration, their duty under resolution II, paragraph 7 (b), to pay US$ 1 million per annum was to be waived as from the date of their registration.

43. It was agreed that India would undertake, if so requested, a programme of exploration in accordance with resolution II, paragraph 12 (a) (i), of one mine site for the Enterprise in the area reserved for the Authority in the Indian Ocean. India's obligation to pay the annual fixed fee of US$ 1 million was also waived "as part of the overall understanding" (ibid., para. 11).

44. The four registered pioneer investors undertook to perform the obligations prescribed in the Convention relating to the transfer of technology, and further

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agreed that training in the use of all available technology was to constitute a substantial component of the training programme (resolution II, para. 12 (a) (iii)).

45. The periodic expenditures for exploration to be incurred in accordance with paragraph 7 (c) of resolution II by the four registered pioneer investors in respect of the development of their respective pioneer areas was to be determined by the Preparatory Commission in consultation with and with the cooperation of each registered pioneer investor within 12 months of the adoption of the understanding. Such expenditures shall be reviewed by the Preparatory Commission from time to time in consultation with and with the cooperation of the registered pioneer investor concerned.

46. Each of the four certifying States agreed to provide, in accordance with article 12 (b) (ii) of resolution II, periodic reports to the Commission on the pioneer activities as defined in paragraph 1 (b) of resolution II, carried out by it or by its entities or natural or juridical persons in their respective pioneer areas. Such reports shall be provided annually.

47. Each registered pioneer investor participating in the activities under paragraph 7 of the understanding shall submit a comprehensive annual report to the Preparatory Commission on the type and extent of activities undertaken by it and details of expenditures incurred during that year, as well as a list of data and information gathered as a result of these activities.

48. The Commission recognizes that the obligation of each certifying State under paragraph 12 (b) (i) of resolution II is to be implemented upon entry into force for that State of the 1982 United Nations Convention on the Law of the Sea.

49. Under this understanding the Group of Technical Experts, within three months of the deposit of the Convention's sixtieth instrument of ratification or accession, has to review the state of deep seabed mining and make an assessment as to when commercial production may be expected to begin. If the Group concludes that commercial production will not take place for an extended period of time, the Preparatory Commission shall recommend to the Authority that the annual fixed fee should be waived for a relevant period (LOS/PCN/L.87, annex).

50. According to this understanding the Preparatory Commission or the Authority shall enter into arrangements similar to those contained in this understanding with any other registered pioneer investor or applicant (ibid., para. 17).

51. It may be noted that, on the adoption of the understanding, the Chairman stated:

> (i) "Should any agreement be made which would affect in any way this understanding, such adjustments as may be necessary shall be made to it;
>
> (ii) "The required date for the submission of a plan of work by each registered pioneer investor under resolution II, paragraph 8 (a), shall be reviewed in the light of the assessment of the Group of

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Technical Experts in accordance with paragraph 12 of the understanding" (LOS/PCN/L.87, para. 40).

52. At the 51st meeting of the Plenary, held on 31 August 1989, the Preparatory Commission adopted a training programme for the Enterprise (LOS/PCN/SCN.2/L.6/Rev.1). The Plenary at its 55th meeting (1990) subsequently adopted the recommendations of Special Commission 2 on the implementation of the Preparatory Commission Training Programme.

53. On 22 August 1990, at its summer meeting, the Preparatory Commission received an application for pioneer investor status from China on behalf of the China Ocean Mineral Resources Research and Development Association (COMRA) (LOS/PCN/113). At the ninth session (1991) of the Preparatory Commission the General Committee, having considered the report of the Group of Technical Experts on China's application (LOS/PCN/BUR/R.7), registered COMRA as a pioneer investor.

54. At the ninth session, the Preparatory Commission received an application from the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Union of Soviet Socialist Republics for registration of the Interoceanmetal Joint Organization as a pioneer investor (LOS/PCN/120). At the summer meeting of 1991 the General Committee, having considered the report of the Group of Technical Experts on that application (LOS/PCN/BUR/R.8), registered the Interoceanmetal Joint Organization as a pioneer investor. It may be noted that the Preparatory Commission decided to include Cuba in the list of States having the right to apply as pioneer investors. Cuba was not listed among the States referred to in paragraph 21 of the 1986 statement of understanding as having the right to apply for pioneer investor status (LOS/PCN/L.41, annex, para. 21).

55. At the summer meeting in 1991, the Chairman of the Preparatory Commission continued his informal consultations which he had begun at the ninth session on the implementation of the obligations of the registered pioneer investor, COMRA. The only issue then left to be resolved concerned the matter of similar treatment for future applicants.

56. At the tenth session of the Commission, the consultations on the implementation of the obligations of the registered pioneer investor, COMRA, reached a successful conclusion. The General Committee, on behalf of the Preparatory Commission, unanimously adopted on 12 March 1992 the understanding on the fulfilment of obligations by the registered pioneer investor and its certifying State, the People's Republic of China (LOS/PCN/L.102, annex).

57. Under that understanding the registered pioneer investor, the China Ocean Mineral Resources Research and Development Association (COMRA), on the basis of the available data collected by China in the area reserved for the Authority, shall provide free of cost to the Preparatory Commission:

Computerized database disks for samples, including:

(i) The establishment of comprehensive computerized database disks for sampled stations;

(ii) Data on station number, coordinates, depth, abundance, metal content, device and information on the source of the data, allowing the raw data to be statistically manipulated and presented on various types of maps and graphs.

58. The obligation of the registered pioneer investor, COMRA, under the provisions of paragraph 7 (b) of resolution II shall be waived as of the date of the registration.

59. The pioneer investor was to provide training pursuant to paragraph 12 (a) (ii) of resolution II in conformity with the specific programme for training approved by the Preparatory Commission in accordance with the principles, policies, guidelines and procedures contained in documents LOS/PCN/SCN.2/L.6/Rev.1 and LOS/PCN/SCN.2/L.7, taking into account the report contained in document LOS/PCN/BUR/R.6. It was agreed that the cost of such training was to be borne by the registered pioneer investor and was to be free of cost to the Preparatory Commission. The precise number of trainees, the duration and the fields of training were to be agreed upon between the Preparatory Commission and the registered pioneer investor according to its capabilities. It was further agreed that the first group of trainees was to consist of no less than four individuals.

60. In accordance with paragraph 12 (a) (iii) of resolution II, the registered pioneer investor undertook to perform the obligations prescribed in the United Nations Convention on the Law of the Sea relating to the transfer of technology, and further agreed that training in the use of all available technology was to constitute a substantial component of the training programme.

61. The registered pioneer investor, the China Ocean Mineral Resources Research and Development Association (COMRA), agreed to undertake a programme of exploration, in accordance with the provisions of paragraph 12 (a) (i) of resolution II, of one mine site for the Enterprise in the area designated as the reserved area for the conduct of activities by the Authority.

62. The periodic expenditures for exploration to be incurred in accordance with paragraph 7 (c) of resolution II by the registered pioneer investor in respect of the development of the pioneer area was to be determined by the Preparatory Commission in consultation with and with the cooperation of the registered pioneer investor within 12 months of the adoption of the understanding. Such expenditures were to be reviewed by the Preparatory Commission from time to time in consultation with and with the cooperation of the registered pioneer investor (LOS/PCN/L.102, annex).

63. The understanding also contains a clause on similar treatment of any other registered pioneer investor or future applicant. It stated:

> "[T]aking into account paragraph 19 (e) of the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), paragraph 17 of LOS/PCN/L.87, annex, and this understanding, as well as the relevant characteristics and merits of each application, the Preparatory Commission or the Authority shall enter into arrangements similar to those contained

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in the above understandings with any other registered pioneer investor or future applicant". (ibid., para. 11)

64. At the tenth session during the summer meeting the General Committee unanimously adopted the understanding on the fulfilment of obligations by the registered pioneer investor, the Interoceanmetal Joint Organization (IOM) and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Russian Federation (LOS/PCN/L.108, annex). The provisions of this understanding are similar to those contained in the understanding on the fulfilment of obligations by the registered pioneer investor COMRA and its certifying State the People's Republic of China.

65. At this session also meetings of the General Committee were held to monitor the implementation of the obligations of the registered pioneer investors. On 12 March 1992, the General Committee considered the report of the Group of Technical Experts on the Preparatory Work carried out by the registered pioneer investors IFREMER/AFERNOD, DORD and Yuzhmorgeologiya, in accordance with the understanding on the fulfilment of obligations (LOS/PCN/L.87, annex) and approved the recommendations therein.

66. In accordance with paragraph 5 of the fulfilment of obligations by the registered pioneer investors and their certifying States (ibid.), the certifying States - France (on behalf of IFREMER/AFERNOD), India, Japan (on behalf of DORD) and the Russian Federation (on behalf of Yuzhmorgeologiya) - submitted periodic reports to the Preparatory Commission on the pioneer activities carried out respectively by the registered pioneer investors (LOS/PCN/BUR/R.11, LOS/PCN/BUR/R.12, LOS/PCN/BUR/R.13 and LOS/PCN/BUR/R.14). France, India and Japan made oral presentations of their reports to the General Committee on 26 February 1992. The report submitted by the delegation of the Russian Federation was orally presented and was considered by the General Committee on 10 March 1992.

67. The General Committee, having considered the reports of the certifying States, took note of them.

Future work

68. In more general terms as far as resolution II is concerned, the task of the Preparatory Commission is to continue its implementation, including the monitoring of the obligations of the registered pioneer investor IFREMER/AFERNOD and its certifying State, France; of the registered pioneer investor DORD and its certifying State, Japan; of the registered pioneer investor Yuzhmorgeologiya and its certifying State, the Russian Federation; the registered pioneer investor, India; the registered pioneer investor COMRA and its certifying State, the People's Republic of China; and of the registered pioneer investor IOM and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, 1/ the Republic of Poland and the Russian Federation. These obligations are respectively contained in the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex), the understanding

on the fulfilment of obligations by the registered pioneer investor COMRA, and its certifying State, the People's Republic of China (LOS/PCN/L.102, annex), and the understanding on the fulfilment of obligations by the registered pioneer investor IOM and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Russian Federation (LOS/PCN/L.108, annex).

B. The Plenary on the Authority

69. The areas of responsibility assigned to the Plenary on the Authority within the framework of the Preparatory Commission could be divided into the following three categories:

(a) Preparation of draft rules of procedure for the organs of the Authority;

(b) Preparation of draft agreements concerning the relationship of the Authority with the United Nations, the host country and the Parties to the Convention on the Law of the Sea;

(c) Submission of recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority.

1. Preparation of draft rules of procedure for the organs of the Authority

70. The Plenary on the Authority started its work with the examination of the draft rules of procedure of the Assembly and subsequently proceeded to the consideration of the draft rules of procedure of the Council, the Legal and Technical Commission and the Economic Planning Commission.

71. The Plenary on the Authority held two readings of the draft rules of each of the above-mentioned organs and finalized their texts with the exception of the provisions relating to financial and budgetary matters, decision-making on questions of substance, elections, participation of observers and subsidiary organs. No agreement could be reached with regard to these substantive provisions, which were identified by the Preparatory Commission as the so-called "hard-core" issues (see the annex to the present report).

72. The final text of the draft rules of procedure of the Assembly is contained in document LOS/PCN/WP.20/Rev.3.

73. It should be noted that some of the rules of the Assembly were adopted by the Plenary on the Authority subject to the understandings which were subsequently reflected in the Chairman's reports.

74. With regard to rule 1 on the regular sessions of the Assembly, it was approved on the understanding that although it was agreed that this rule should follow the text of article 159, paragraph 1, of the Convention on the Law of the

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Sea, the Authority might need to review in the future the overall picture of meetings of all its organs, taking account of financial considerations (LOS/PCN/L.67/Rev.1, para. 20).

75. Draft rules 22 to 26 of sections III and IV on representation and credentials as well as rule 50 concerning public meetings and rule 59 entitled "Closing of list of speakers, right of reply" were approved on the understanding that, if required, they could be reconsidered once rule 93 on observers was finalized (ibid., para. 21).

76. With regard to rule 105 concerning financial implications, the Chairman's report notes that the text of this rule might need some modifications and adjustments in the light of the provisions to be adopted on the Finance Committee (LOS/PCN/L.67/Rev.1, para. 23).

77. As far as rule 68 on voting rights is concerned, it should be noted that the delegation of the European Economic Community (EEC) introduced an amendment to this rule concerning the participation in decision-making of an international organization referred to in Annex IX of the United Nations Convention on the Law of the Sea (LOS/PCN/WP.46). According to this proposal, a second paragraph should be added to rule 68, which would read as follows:

> "2. An international organization, Party to the Convention in accordance with Annex IX of the Convention, shall only participate in votes on matters relating to which competence has been transferred to it by its member States. In such a case, its member States shall not participate in the vote, and the international organization shall cast the votes which would otherwise - in the absence of transfer of competence - be cast by its member States Parties to the Convention."

78. The proposal mentioned in the preceding paragraph was extensively discussed. No solution was reached on it. It is recommended that further consideration be given to it by the Assembly of the Authority at an appropriate time.

79. It was clear from the debate that, in accordance with the Convention on the Law of the Sea, the vote to be cast by an international organization Party to the Convention should in no case entail an increase in the number of votes (LOS/PCN/L.72, paras. 6 and 7).

80. As mentioned above, the rules of procedure of the organs of the Authority were not completely finalized because of disagreement on several key elements of the rules, which were identified as hard-core issues. The pending draft rules of procedure of the Assembly relating to these issues are the following: financial and budgetary matters - rule 104 (Proposed annual budget); rule 106 (Contributions); decision-making - rule 71 (Decisions on questions of substance); rule 72 (Decisions on amendments to proposals relating to questions of substance); rule 107 (Method of amendment); elections - rule 28 (Elections); rule 83, paragraph 3 (Restricted balloting for one elective place); rule 94 (Nominations); rule 95 (Order of elections); rule 100 (Elections); observers - rule 93, paragraphs 2-6 (Observers); subsidiary organs - rule 87 (Composition).

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81. The final text of the draft rules of procedure of the Council is contained in document LOS/PCN/WP.26/Rev.3.

82. As in the case of the Assembly, a number of the draft rules of procedure of the Council were approved on condition that the Chairman would include agreed statements in his report in connection with such rules.

83. With regard to rule 7 concerning notification of observers, it was noted in the Chairman's report that although the rule was approved, the ultimate decision on it was contingent upon the final text of rule 93 (on observers) of the draft rules of procedure of the Assembly, which was left pending (LOS/PCN/L.54, para. 11).

84. Rule 16 on the composition of delegations was adopted on the understanding that the Council had no authority regarding the composition of delegations and that its functions were confined to the examination of their credentials (ibid., para. 12).

85. In connection with paragraph 2 of rule 22 concerning elections, it was pointed out that the principle of rotation among the regional groups for the presidency of the Assembly, the Council, the Legal and Technical Commission, the Economic Planning Commission and the Finance Committee should receive due consideration in the future (ibid., para. 14).

86. In the draft rules of procedure of the Council, the following rules relating to the hard-core issues were left pending: financial and budgetary matters - rule 31 (Submission of the annual budget); rule 34 (Estimate of expenditures); rule 81 (Finance Committee); decision-making - rule 53 (Decisions requiring two-thirds majority); rule 54 (Decisions requiring three-fourths majority); rule 58 (Procedures for reaching a consensus); rule 70 (Approval of plans of work submitted by applicants other than the Enterprise); rule 71 (Approval of plans of work submitted by the Enterprise); rule 92 (Method of amendment); elections - rule 75 (Equitable geographical distribution and the representation of special interests); observers - rule 73 (Participation by observers); subsidiary organs - rule 83 (Composition).

87. The final text of the draft rules of procedure of the Legal and Technical Commission is contained in document LOS/PCN/WP.31/Rev.3.

88. Some of the rules were approved subject to the following understandings.

89. Although rule 4 concerning notification on the sessions of the Commission was adopted, it was acknowledged that since the rule contained reference to observers, its text could be reviewed again once the issue of observers in general in the rules of procedure of the organs of the Authority was finalized (LOS/PCN/L.62, para. 17).

90. Draft rule 10 dealing with compatible activities and confidentiality was adopted on the understanding that the issue of confidentiality and liability would be addressed at an appropriate time in the future in the general context of all organs of the Authority and the Tribunal for the Law of the Sea (ibid., para. 11).

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91. Draft rule 22 concerning estimate of expenditures was adopted on the understanding that the question about the need to spell out in this rule that the reference to financial implications included, where appropriate, financial obligations, would be addressed when the relevant rules of procedure of the Council were considered (ibid., para. 18).

92. With reference to rule 43 concerning recommendations to the Council, it was decided that the text of the rule could be reviewed in the future, if required, in the light of the further discussions on the hard-core issue of decision-making (ibid., para. 12).

93. The following draft rules of procedure of the Legal and Technical Commission were left pending due to their relation to the hard-core issues: decision-making - rule 38 (Reconsideration of the proposals); rule 41 (Decisions on questions of substance); elections - rule 14 (Election of Chairman and the Bureau); observers - rule 56 (Participation by observers).

94. The final text of the draft rules of procedure of the Economic Planning Commission is contained in document LOS/PCN/WP.36/Rev.2.

95. The following draft rules were adopted subject to the understandings recorded in the Chairman's report.

96. Draft rule 10 on incompatible activities and confidentiality, the text of which is identical to a similar rule in the draft rules of procedure of the Legal and Technical Commission was also approved on the understanding that at an appropriate time in the future the issue of confidentiality would be studied in the general context of all organs of the Authority and the International Tribunal for the Law of the Sea (LOS/PCN/L.67/Rev.1, para. 7).

97. With regard to rule 16 on the Acting Chairman, it was pointed out in the Chairman's report that there would be a need for the fair distribution of posts among regional groups in all organs of the Authority (ibid., para. 14).

98. Draft rule 22 concerning estimate of expenditures, which follows the text of a similar rule 22 in the draft rules of procedure of the Legal and Technical Commission, was also adopted on the understanding that the concern expressing the need to spell out in such a rule that the reference to financial implications included, where appropriate, the financial obligations of States, would be addressed when the relevant rules of procedure of the Council were considered (ibid., para. 15).

99. The following rules were left pending in the draft rules of procedure of the Economic Planning Commission because of their relation to the hard-core issues: decision-making - rule 38 (Reconsideration of proposals); rule 41 (Decisions on questions of substance); elections - rule 14 (Election of Chairman and the Bureau); observers - rule 55 (Participation by observers). Throughout the work of the Preparatory Commission, the delegation of Japan has taken the position that in order to increase the cost-effectiveness of the Authority the number of languages used by its organs should be reduced to the extent possible. Therefore, although the delegation of Japan did not oppose the adoption of the rules stating that the languages of the organs of the Authority would be the six

official languages of the Convention on the Law of the Sea, it reserved its position with regard to these rules, namely, rule 44 (Assembly); rule 85 (Council); rules 57 and 58 (Legal and Technical Commission); rules 56 and 57 (Economic Planning Commission).

100. As far as the hard-core issues are concerned, it turned out that some of them would probably be easier to resolve than the others. The Plenary on the Authority was, for example, rather close to resolving the issue of subsidiary organs.

101. When the Plenary on the Authority started the examination of the issue of subsidiary organs, there were four approaches to it among the delegates.

102. First, the position was taken that the Assembly should have main committees following the normal structure of any large international organization. It was suggested that the organization of the Preparatory Commission could be the model of the future Assembly.

103. Those who supported the second position argued that there was no need for the Assembly to have main committees. The structure of other organizations should not be blindly followed, and the structure of the United Nations should not necessarily be taken as a model.

104. It was observed that the United Nations was a global body dealing with a wide range of global issues: issues of a political nature, security issues, economic issues, social and cultural issues. As a consequence the United Nations must possess Main Committees because one Assembly could not deal with all of those issues. It was noted that the structure of the Preparatory Commission was not a good example either, inasmuch as once the Authority began to function some of the functions of the Preparatory Commission would become functions of organs other than the Assembly.

105. According to a third point of view, it was too early to take a position on whether or not the Assembly would have main committees. The Preparatory Commission should wait until it completed its work and until the structure of the Authority and its functions were clearly defined. It was only at that stage that the Preparatory Commission would be in a position to assess whether the Assembly would need main committees.

106. Under the fourth viewpoint, some delegates argued that there was no need for the Preparatory Commission to make recommendations on the matter. The Commission should leave the decision on the question as to whether there should be main committees to the Assembly of the Authority (LOS/PCN/L.19).

107. The Chairman conducted several rounds of consultations on the above issue. Finally, a compromise was achieved. It was agreed, at the suggestion of the Chairman, that the Preparatory Commission would not make any recommendations to the Authority with regard to the establishment of subsidiary organs of the Assembly. The only exception could be the Finance Committee, if the Preparatory Commission decided to recommend it as a joint subsidiary organ of the Assembly and the Council. Therefore, it would be left to the Assembly to decide in the

light of its needs and the particular circumstances what subsidiary organs it might wish to establish.

108. In connection with the above understanding, it was noted in the Chairman's report that although the Preparatory Commission should make necessary recommendations to the Authority to ensure its proper functioning, there was a general concern with respect to the financial implications involved in recommending a heavy structure for the Authority at the initial stage of its operation. It was also pointed out that it would be difficult for the Preparatory Commission to foresee the types of subsidiary organs that the Assembly might require to perform its functions at the different stages of its activities.

109. It was also pointed out in the Chairman's report that one delegation held the view that by taking this decision the Preparatory Commission was in effect abdicating its responsibilities. It was stated that it would not be realistic to believe that the Assembly, sitting in plenary meetings, would be able to deal effectively with its agenda.

110. As a result of the adoption of the above understanding, the Plenary could approve rules 86, 88 and 89 in the draft rules of procedure of the Assembly and rules 82 and 84 in the draft rules of procedure of the Council, which relate to subsidiary organs (LOS/PCN/L.82, paras. 35-40). Thus the only pending rules on subsidiary organs are rule 87 (Assembly) and rule 83 (Council) entitled "Composition". These rules were not approved because of their relation to the unresolved question of the composition of the Finance Committee.

111. There were two categories of problems with regard to the question of observers. On the one hand, some delegates took the position according to which States which were signatories to the Convention should be accorded the right of full participation in the work of the Assembly but would not be able to participate in decision-making. On the other hand, some other delegates held the view that no distinction should be made between States signatories and States which did not sign the Convention, and that all States should be able to participate fully in the work of the Assembly.

112. During the consultations undertaken by the Chairman two further suggestions were made. First, it was pointed out that national liberation movements should enjoy a higher status than was accorded them in the proposed draft rules of procedure of the Assembly. Secondly, it was suggested that international organizations which were subjects of international law should also have a higher status than had been accorded to them in that draft.

113. In all cases, whether these were States signatories, all States, national liberation movements or international organizations which were subjects of international law, the main argument rested on the fact that the Convention, particularly Part XI, was intended to be of universal application, and giving a meaningful role to States and other entities already mentioned would encourage this universal participation and thus would reflect the spirit of Part XI, which itself embodied the principle of the common heritage of mankind.

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114. It was also argued in support of the first position mentioned above that signatory States had already given an indication of their intent to ratify, or at least had accepted the principles of, the Convention and it was likely that they would ratify and become members. On the other hand, those supporting the second position contended that after the closing of the signing period States were on an equal footing and were all eligible to become Parties, and it did not really matter whether they had signed the Convention or not, because a State which had not signed the Convention might accede to it even before a State which had signed it. Thus the distinction between signatories or non-signatories became unimportant.

115. At the same time, the Chairman's consultation revealed that there was broad agreement on the need to make efforts in order to promote the universal character of the Convention, and for that reason there was broad agreement that observers should be accorded meaningful participation. There were, however, different approaches to the other elements of that problem.

116. There were those who argued that giving the right of full participation to observer States would not induce non-parties to think favourably of ratifying or acceding to the Convention, and the more States which ratified or acceded, the more viable the Authority was going to be. If it were ratified by only a few States the financial burden alone would discourage States from ratifying. The counterview was that if full rights were accorded to States which were not Parties, there would be no incentive for them to ratify or accede to the Convention. Those who held this view recognized that a distinction was made in the sense that non-parties would not participate in decision-making, but they argued that this was not a meaningful distinction. The history of the Conference created a tradition whereby decisions would be reached by consensus - at least most of the important decisions would be reached by consensus - and it was probable that the Authority would maintain that policy, so that a distinction based on decision-making had no real meaning.

117. Many argued that they were not concerned with a distinction between signatories, non-signatories, national liberation movements and international organizations. To them that was a minor point. They said the real problem was to make a distinction between the Parties to the Convention and non-parties, and that Parties to the Convention should have a higher status than observers.

118. There were certain cases where observers should be completely excluded. For example, it was pointed out that the Assembly had two functions. The first related to policy-making. Supporters of this view had no objection to the participation of observers when the Authority was engaged in such functions. The second related to the administrative and executive functions of the Authority, and it was their position that non-members should not participate in functions that were of an executive or of an administrative nature. They admitted that sometimes it was difficult to make a distinction between what was a policy-making function and what was an executive or administrative function, but still the distinction should be made. In short, their position was that a clear distinction should be made between the roles played by members and observers in the deliberations of the Assembly (LOS/PCN/L.19).

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119. The Plenary on the Authority had to deal with two main issues. First, it had to decide which observers were going to be accorded a higher status, and secondly it had to define the meaning of "meaningful participation", since as stated above there was broad agreement on according meaningful participation to observers.

120. At the consultations undertaken by the Chairman with a view to resolving the issue of observers, he outlined two types of questions that needed to be addressed. The first concerned the entities which would be granted observer status, and the second related to the extent and nature of the participation of observers in the work of the Assembly and the Council.

121. With regard to the first question, progress was made at the consultations, and as a result the Plenary on the Authority agreed on the list of entities to be granted the status of observers and approved paragraph 1 of rule 93 of the draft rules of procedure of the Assembly containing such a list (LOS/PCN/L.82, paras. 41 and 42).

122. As far as the nature and the extent of observer participation in the work of the Assembly and the Council were concerned, the consultations proved that it would be difficult to narrow the gap between various positions. There was, however, a perception among participants in the consultations that the issue of the status of observers should not be dealt with in a manner which could be construed as a disincentive for States to ratify or accede to the Convention. There was also broad agreement on the need to make efforts to promote the universal character of the Convention on the Law of the Sea (ibid., para. 43).

123. A proposal on the establishment of the Finance Committee was originally included in the draft rules of procedure of the Council in the light of the provisions contained in article 162, paragraphs 2 (0) (i) and 2 (y), of the Convention. In the final text of the rules of procedure of the Council, draft rule 81 on the Finance Committee remains among the pending issues. In addition to that rule, at the session of the Preparatory Commission, held in March 1988, the Secretariat was asked to prepare a separate working paper on the Finance Committee, covering in detail all aspects of its future activities. The working paper on the Finance Committee, which was considered mainly at the level of consultations conducted by the Chairman with interested delegations, was subsequently revised twice in the light of those consultations. The final text of the working paper on the Finance Committee, reflecting the results of the above-mentioned consultations as approved by the Plenary, is contained in document LOS/PCN/WP.45/Rev.2.

124. With the exception of two sections relating to elections of the members of the Finance Committee and decision-making, the Plenary on the Authority approved all other sections of that paper.

125. The working paper provides that the Finance Committee should be established as a subsidiary organ of both the Assembly and the Council.

126. With regard to the composition of the Finance Committee, it was understood that although the Preparatory Commission would recommend that the Finance Committee be composed of 15 members, the Authority would of course be free to

decide otherwise or to change that number at any given time in the future (LOS/PCN/L.97, para. 23).

127. With regard to the section on elections of the members of the Committee, in the course of the discussions the following three criteria were identified by various delegations: representation of special interests; equitable geographical representation; and representation of highest contributors. After quite a lengthy debate on these criteria, the Chairman summarized the discussion by stating that there was a general agreement on the first two criteria (ibid., para. 24). It should be noted, however, that several delegations during the discussion expressed the view that in future deliberations a precise meaning for the criterion of "representation of special interests" should be sought (LOS/PCN/L.72, para. 16).

128. Reference to the representation in the Finance Committee of States with the highest contributions to the administrative budget of the Authority proved to be the most controversial provision. A majority of delegates spoke against its retention, emphasizing the lack of any legal basis in the Convention on the Law of the Sea for such a reference. Other delegates took the position that since the States with the highest contributions would bear the main burden of expenses of the Authority, they should have a legitimate right to a substantial representation on the Finance Committee. In their view such a level of representation should remain until the Authority became self-sufficient (ibid., para. 17).

129. On the issue of decision-making, the general view was that the Finance Committee, as an advisory organ, should be as efficient as possible. Therefore no attempt should be made to insert in its rules provisions that could paralyse the work of the Finance Committee in the future. In this regard attention was drawn to the experience of the relevant United Nations organs which might be helpful in seeking proper procedures for the Finance Committee. In summing up the debate, it was indicated that by capitalizing on the experience of these organs the idea of consensus by default could be studied. In practice that would mean that there would be no rule on consensus, but in case of disagreement the Finance Committee would be required to submit a report on the views expressed.

130. During the debate a trend emerged to link decision-making procedures to particular functions. It was pointed out by some delegations that some functions might require decisions by consensus, while for others a three-fourths or a two-thirds majority would be appropriate. It appeared also from the discussion that some delegations held the view that certain functions should result in the submission of recommendations by the Finance Committee, while other functions might envisage the submission of reports and studies (ibid., paras. 22 and 23).

131. Some of the members of the Commission pointed out that it would be difficult to take a final position on decision-making without first deciding on the representation of various groups of States on the Finance Committee. These members held the view that the issue of the relationship between the Finance Committee on the one hand and the Assembly and the Council on the other and, in

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this regard, the question of the value of the recommendations of the Finance Committee, would require further consideration.

132. Other members of the Commission were convinced that in approaching the issue of decision-making, the character of the Finance Committee, as an expert body, should be kept in mind. In this connection, they referred to precedents of decision-making procedures in similar bodies of the organizations of the United Nations system and stressed that the Authority should capitalize on such successful experience. Some delegations noted that although the composition of the Finance Committee was an important matter it should not have a decisive effect on decision-making because the Finance Committee was an expert body and its members acted in their personal capacity and not as representatives of member States (LOS/PCN/L.102, paras. 38 and 39).

133. As far as the staff regulations and the financial regulations are concerned, the Plenary on the Authority did not consider these matters. The only document circulated in this regard was the 1983 Secretariat working paper entitled "Suggested Tables of Contents for the Preparation of Draft Rules, Regulations and Procedures by the Preparatory Commission" (LOS/PCN/WP.14) which contained, among other suggestions, an outline of staff rules and regulations.

134. With regard to elections to the organs of the Authority the main differences of views may be summarized as follows:

(a) Many delegations expressed the view that elections to the organs of the Authority should be treated as a matter of procedure requiring a simple majority consistent with the practice in the United Nations system and other international organizations; that the Convention was careful to provide the categories to be classified as substance and elections were not included in these categories. In any event the Convention provided that if a question arises as to whether a matter was a matter of substance or procedure the question would be treated as one of substance unless otherwise decided by the majority required for decision of election.

Other delegations contended that elections were a matter of substance and should be decided by a two-thirds majority. Some delegations maintained that certain positions, such as the President of the Council, were of such importance that it was necessary to demonstrate that these office holders were supported not merely by a simple majority.

(b) Another matter discussed centred around elections to the Council.

Some delegations proposed that the elections should ensure that the eight largest contributors to the Administrative Budget of the Authority were elected to the Council.

Many delegations argued that such a proposal would be inconsistent with the provisions of the Convention which struck a fine balance between representation for special interests and equitable geographical representation.

(c) Governing Board of the Enterprise

A similar proposal was made in respect of the Governing Board of the Enterprise by providing that due regard should be paid to equitable geographical distribution as well as expertise in financial fields, particularly those relevant to deep seabed mining, in such a way that eight of the members of the Governing Board shall be elected, from among candidates proposed by the eight States Parties which account for the largest proportions of the sums initially made available for payment or guarantee to the Enterprise.

Many delegations were opposed to this proposal, contending that the Enterprise was an embodiment of the common heritage of mankind and that the proposal would not only be inconsistent with the Convention but give a disproportionate representation to some countries.

135. Despite intensive consultations undertaken by the Chairman with the interested delegations on the hard-core issues of financial and budgetary matters, decision-making and elections, no substantial progress could be achieved on these issues.

136. In the course of the consultations held during the sessions of the Preparatory Commission on the hard-core issues, different views were espoused by delegations. These are to be found in the different Statements of the Chairman of the Preparatory Commission on the work of the sessions during which they were discussed.

137. It was felt that, notwithstanding the exhaustive discussions held on the hard-core issues, no solutions could be reached on these issues at this stage, until the practical difficulties of Part XI were to be addressed.

138. The Chairman of the Preparatory Commission summed up the discussion on these hard-core issues by stating that further consideration would be given to them at an appropriate time. An exhaustive list of these issues is annexed to the present report as pending issues.

2. Preparation of draft agreements concerning the relationship of the Authority with the United Nations, the host country and the Parties to the Convention on the Law of the Sea

139. In the discharge of this assignment the Plenary on the Authority has considered and decided to recommend to the Authority the texts of the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority, the draft Protocol on the Privileges and Immunities of the International Seabed Authority and the draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority. Some of the provisions of these agreements were approved with additional clarifications included in the respective reports of the Chairman on the work of the Plenary.

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140. The draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority is contained in document LOS/PCN/WP.47/Rev.2. It was approved with the following clarifications.

141. With regard to paragraph 7 of article 4 concerning law and authority in the Headquarters, it was noted that a suggestion was made to include the words "or in the rules of the Authority". These words were not incorporated into the text of this paragraph because it was understood that the approval of plans of work and contractual arrangements falling under the Mining Code would be regulated by the United Nations Convention on the Law of the Sea (LOS/PCN/L.87, para. 16).

142. Draft article 30 on the assistance which should be provided by the host Government to States Parties and observers in obtaining suitable premises was not included in the text of the Agreement on the understanding that the Government of Jamaica would do its best to assist missions and their members, in accordance with the established international practice, of obtaining suitable premises and accommodations (ibid., para. 19).

143. Article 48 concerning security matters was approved on the understanding that it should be seen as reflecting the need for giving certain flexibility to the Government of Jamaica in taking security measures. It was agreed that the article implied that whenever any measures were to be taken there should be consultations between the Authority and the Government of Jamaica with regard to such measures (ibid., para. 17).

144. In connection with article 55 concerning the relationship between the Agreement and the Protocol, it was agreed to retain it in the text of the Agreement, on the understanding that, for the purposes of the article, any supplementary agreements concluded in accordance with article 56 would be part and parcel of the Headquarters Agreement (LOS/PCN/L.102, para. 14).

145. The draft Protocol on the Privileges and Immunities of the International Seabed Authority is contained in document LOS/PCN/WP.49/Rev.2.

146. The Plenary on the Authority approved the following clarifications with regard to some of the articles in the text of the Protocol.

147. In article 17 on privileges and immunities of the representatives of member States and of observer States, paragraph 4 was approved on the understanding that under its provisions a State was not prohibited from providing its nationals the privileges and immunities referred to in paragraphs 1 and 2 of the same article.

148. Article 21, subparagraph 1 (f), concerning exemption of experts employed by the Authority from immigration restrictions, alien registration requirements and national service obligations, was approved on the understanding that the exemption did not apply in the case of the country of origin of the expert (ibid., para. 16).

149. The draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority is contained in document LOS/PCN/WP.50/Rev.3.

150. The following clarifications with regard to some articles of that Agreement were agreed upon and recorded in the reports of the Chairman.

151. The Plenary decided that there was no need for a separate article on cooperation in the field of public information as had been originally suggested because with the addition of the words "in the field of public information" to the provisions of paragraph 1 of article 3 such cooperation would be covered by the general provisions of that article (ibid., para. 6).

152. In approving article 19 on the possible use by the Authority of the United Nations laissez-passer, the Plenary on the Authority took note of the reservations expressed in this regard by the delegation of Japan which was of the view that the practice of the use of the United Nations laissez-passer by other international organizations should be limited to specialized agencies (LOS/PCN/L.97, para. 7).

3. Submission of recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority

153. Owing to the very nature of the administrative and financial arrangements, their consideration was initiated in the Plenary on the Authority relatively late, since it would not have been possible to identify earlier with sufficient precision the initial requirements of the Authority in this field. The first and only paper submitted on this subject-matter was presented at the session of the Preparatory Commission held in August 1990 in New York. It was entitled "Administrative arrangements, structure and financial implications of the International Seabed Authority" (LOS/PCN/WP.51) and was aimed mainly at facilitating the exchange of views between members of the Preparatory Commission. That document is contained in document LOS/PCN/WP.51.

154. The outcome of the discussions of the Plenary on the Authority on the above paper was reflected in the Chairman's reports. According to those reports, it appeared from the debate that there was general agreement that the Authority should be both efficient and cost-effective and that its size and structure should meet the needs of the Authority during the initial period of its activities. Therefore, it was suggested during the debate that the structure of the secretariat of the Authority should reflect the concerns for efficiency and cost-effectiveness, taking into account the functions that the Authority will be called upon to perform in the initial stages. It was understood that whatever approach was eventually chosen to achieve those goals, it should preserve the autonomous nature of the Authority. The members of the Plenary on the Authority agreed that details of those general principles should be worked out at an appropriate time in the future and that at that time due consideration would be given to each of the principles.

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Annex

PENDING ISSUES BEFORE THE PLENARY ON THE AUTHORITY

- Provisions in the rules of procedure of the Authority relating to financial and budgetary matters:

Assembly - rule 104 (Proposed annual budget); rule 106 (Contributions).

Council - rule 31 (Submission of the annual budget); rule 34 (Estimate of expenditures); rule 81 (Finance Committee).

- Provisions in the rules of procedure of the Authority relating to decision-making:

Assembly - rule 71 (Decisions on the questions of substance); rule 72 (Decisions on amendments to proposals relating to questions of substance); rule 107 (Method of amendment).

Council - rule 53 (Decisions requiring two-thirds majority); rule 54 (Decisions requiring three-fourths majority); rule 58 (Procedures for reaching a consensus); rule 70 (Approval of plans of work submitted by applicants other than the Enterprise); rule 71 (Approval of plans of work submitted by the Enterprise); rule 92 (Method of amendment).

Legal and Technical Commission - rule 38 (Reconsideration of the proposals); rule 41 (Decisions on questions of substance).

Economic Planning Commission - rule 38 (Reconsideration of proposals); rule 41 (Decisions on questions of substance).

Finance Committee - section on decision-making.

- Provisions in the rules of procedure of the organs of the Authority relating to elections:

Assembly - rule 28 (Elections); rule 83, paragraph 3 (Restricted balloting for one elective place); rule 94 (Nominations); rule 95 (Order of elections); rule 100 (Elections).

Council - rule 75 (Equitable geographical distribution and the representation of special interests).

Legal and Technical Commission - rule 14 (Election of Chairman and the Bureau).

Economic Planning Commission - rule 14 (Election of Chairman and the Bureau).

Finance Committee - section on elections.

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- _Provisions in the rules of procedure of the organs of the Authority relating to the issue of observers_:

    Assembly - rule 93, paragraphs 2-6 (Observers).

    Council - rule 73 (Participation by observers).

    Legal and Technical Commission - rule 56 (Participation by observers).

    Economic Planning Commission - rule 55 (Participation by observers).

- _Provisions in the rules of procedure of the organs of the Authority relating to subsidiary organs_:

    Assembly - rule 87 (Composition).

    Council - rule 83 (Composition).

- _Preparation of detailed recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority_.

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Chapter II

PROVISIONAL REPORT OF SPECIAL COMMISSION 1*

Explanatory remarks

155. At the end of the tenth session of the Preparatory Commission, the Draft Provisional Report of Special Commission 1 was issued. This report consisted of:

(a) The text of the report itself;

(b) An annex entitled "Draft provisional recommendations resulting from the deliberations of Special Commission 1, which can be submitted to the International Seabed Authority". This annex itself had three annexes, A, B and C;**

(c) An appendix entitled "List of documents";***

(d) Four addenda containing the documentation of Special Commission 1.

156. The text of the report along with the annex and the appendix are contained in document LOS/PCN/SCN.1/1992/CRP.22; the four addenda are contained in documents LOS/PCN/SCN.1/1992/CRP.22/Add.1-4.

157. During the eleventh session of the Preparatory Commission, the Special Commission considered the text of the report itself. Consideration of a general nature was followed by consideration of a specific nature through a paragraph-by-paragraph review of the text. In the "Statement to the Plenary by the Chairman of Special Commission 1 on the progress of work in that Commission" (LOS/PCN/L.109) during the session, a summary was presented of the general consideration (ibid., sect. II) as well as of the paragraph-by-paragraph consideration of the text (ibid., sect. III). In paragraph 51 of the Statement, the Chairman stated, "[The annex, the appendix and the addenda 1 to 4 to document CRP.22] were not considered. It should be added that the documentation of Special Commission 1 is contained in addenda 1 to 4 to document CRP.22; the Special Commission reviewed and discussed the documents at the time when they were issued."

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* This chapter is a revised version of the text of the report which originally appeared in document LOS/PCN/SCN.1/1992/CRP.22.

** These appear respectively as the annex, and appendices I, II and III to the present chapter.

*** See volume III.

158. The present document incorporates the specific amendments accepted by Special Commission 1 during the paragraph-by-paragraph consideration of the text of the Draft Provisional Report of Special Commission 1. It does not, however, address either the general comments or the comments noted by the Special Commission during the paragraph-by-paragraph consideration.

159. It should be recalled that at the end of the eleventh session the Chairman of Special Commission 1 stated, "It is the understanding of the Special Commission that the draft provisional report contained in document CRP.22, the annex to CRP.22 including annexes A, B, and C, the appendix to CRP.22, and the four addenda to CRP.22, combined with the general comments contained in section II of this Statement, the specific amendments accepted by the Special Commission as well as the comments noted by it, as contained in Section III of this Statement, constitute a total package that represents where the Special Commission stands at this time" (LOS/PCN/L.109, para. 52).

A. Introduction

160. Background. While establishing an international regime for the newly defined maritime zone, the Area, i.e., "the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction" (Convention, article 1 (1)), the 1982 United Nations Convention on the Law of the Sea dealt with a number of related issues, one of them being "the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, ..." i.e., "all activities of exploration for, and exploitation of, the resources of the Area" (Convention, articles 150 (h) and 1 (3)).

161. Mandate of the Special Commission. In the above context, pursuant to paragraphs 9 and 5 (i) of resolution I of the Third United Nations Conference on the Law of the Sea, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, during its resumed first session in summer 1983, established Special Commission 1, with the mandate of "undertak[ing] studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit[ting] recommendations to the (International Seabed) Authority thereon" (resolution I, para. 5 (i)).

162. Programme of work. The Special Commission started its work in spring 1984 during the second session of the Preparatory Commission, under the chairmanship of H.E. Dr. Hasjim Djalal (Indonesia), and with the cooperation of its Vice-Chairmen and consisting of representatives of Austria, Cuba, Romania and Zambia. With respect to the programme of work to fulfil its mandate, as has been pointed out, "in studying the problems of developing land-based producer States, it is necessary to know, first, which minerals would be produced from seabed sources; second, how the introduction of the minerals from this new source would affect

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the existing land-based sources; third, what would these effects be and which developing States would be affected; fourth, what problems or difficulties, in connection with these effects, these developing States would encounter; and finally, what could be done to minimize these difficulties" (LOS/PCN/L.2, para. 2). This logically structured framework is reflected in the programme of work adopted by the Special Commission at its first meeting (contained in LOS/PCN/SCN.1/1984/CRP.2), which listed five subject areas corresponding to the five areas of study in the statement above. Lists of specific issues falling under each of the five subject areas were then identified in CRP.3, which constituted the detailed programme of work of the Special Commission. It was also the understanding of the Special Commission that "the recommendations (to the Authority) will be the end results of its work (on these subject areas)" (ibid.).

163. The subject areas listed in CRP.2 and CRP.3 are: (i) projection of future production from the international seabed area; (ii) relationship between production from the Area and existing land-based production; (iii) identification, definition and measurement of effects of seabed production on developing land-based producer States; (iv) determination of the problems/difficulties that would be encountered by the affected developing land-based producer States; (v) formulation of measures to minimize problems/difficulties of affected land-based producer States.

164. In the course of discussion, the interrelationships among the five subject areas became quite obvious, especially those among (ii), (iii) and (iv). The needs for the relevant data and information were also recognized, and discussed on a number of occasions. Thus, deliberations in many instances were carried out by addressing the subject areas in an interrelated manner. However, for the purpose of a systematic presentation, a relatively distinct division can be made among the following areas:

(a) Projection of future production from the international seabed area;

(b) Relationship between production from the Area and existing land-based production; identification, definition and measurement of effects of seabed production on developing land-based producer States; determination of the problems/difficulties that would be encountered by the affected developing land-based producer States;

(c) Formulation of measures to minimize problems/difficulties of affected developing land-based producer States;

(d) Data and information needs.

165. Organs and meetings. In the implementation of its programme of work, the Special Commission held a total of 121 formal meetings, and an additional 22 meetings with full facilities. Its Bureau held 35 open-ended meetings (open to all members of the Special Commission).

166. During the sixth session of the Preparatory Commission, in spring 1988, the Special Commission established an Ad Hoc Working Group (open to all members of the Special Commission) to deal with certain "hard core" issues,

i.e., criteria for the identification of developing land-based producer States likely to be or actually affected by seabed production, assistance measures, including system of compensation/compensation fund, for developing land-based producer States, and effects of subsidized seabed mining. This Group started its work during the resumed sixth session in summer 1988, under the chairmanship of Mr. Karl Wolf (Austria), and was later chaired by Mr. Luis G. Preval Paez (Cuba); it held 32 meetings, sharing meeting time and facilities with the Special Commission.

167. During the seventh session of the Preparatory Commission in spring 1989, the whole range of provisional conclusions of the deliberations of the Special Commission were drawn up by the Chairman (contained in CRP.16), which can form the basis of its recommendations to be submitted to the Authority, as per its mandate. These provisional conclusions were revised by the Chairman (CRP.16/Rev.1), as a result of discussions in the Special Commission. In the course of discussing the revised conclusions during the ninth session in spring 1991, a 14-member Chairman's Negotiating Group was established by the Special Commission to negotiate, on an *ad referendum* basis, the provisional conclusions and, thereby, the recommendations. Various regional groups and interest groups were represented in the Negotiating Group. The members of the Negotiating Group were: Algeria, Australia, Canada, Chile, China, Cuba, European Economic Community, Japan, Philippines, Poland, Uganda, Union of Soviet Socialist Republics (later Russian Federation) and Zambia, without prejudice to any member of the Commission presenting its case. This group held 16 meetings.

B. Completion of consideration of all items under the programme of work

168. The Special Commission completed the consideration of all the items included in its detailed programme of work (CRP.3). The consideration of an item, in most cases, started with a discussion of a background paper on that item prepared by the Secretariat. In addition, in certain cases, consideration of an item was facilitated by presentations by experts from relevant organizations invited by the Special Commission (for example, World Bank, International Monetary Fund, United Nations Conference on Trade and Development, European Communities, Regional Conference on the Development and Utilization of Minerals in Africa, Permanent Commission for the South Pacific). The conclusions from such consideration were then negotiated, in a preliminary manner, often based on initial suggestions forwarded by the Chairman, and then incorporated in the comprehensive set of provisional conclusions.

169. The mandate of Special Commission 1 is of a somewhat different nature from that of the other organs of the Preparatory Commission in that it involves undertaking studies which would focus essentially on the potential impact of future seabed mining on the land-based production of the relevant minerals in developing countries, and making recommendations on the basis of the findings of such studies, rather than procedural preparation for the commencement of functions of institutions. The work of the Special Commission was, thus, of a highly technical nature, involving the utilization of data and information, research and analysis, studies and assessments. The documentation of the Special Commission, which is a record of its work, constitutes, therefore, an

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extremely useful reference and source material for the Authority. For this purpose, inter alia the documentation of the Special Commission is presented in its entirety in volume III.

170. Consideration of all the items, at a general level, started initially with the discussion of a lead-off background paper (LOS/PCN/SCN.1/WP.1). The Special Commission then discussed the minerals that may be produced from seabed sources, the metals that may be extracted from these minerals, the current market situation and future prospects for these metals from land-based sources, the possible impact of the introduction of metals from seabed sources into the markets, the importance of recycling and substitution in the metal markets, the importance of bilateral trade, and the developing countries that are producing these metals from land-based sources (WP.2 and Add.1-7, WP.13). The Special Commission then considered the item of identifying land-based producer States likely to be affected by future seabed production (background papers WP.3 and WP.6, suggestions of the Chairman of the Special Commission and of the Chairman of the Ad Hoc Working Group contained in CRP.8, CRP.18 and Rev.1-4, and amendments suggested by Indonesia and the EEC to document CRP.18/Rev.3 as contained in documents CRP.18/Rev.3/Add.1 and 2 respectively). The Special Commission considered the item of measuring effects of future seabed production and problems that may be encountered by developing land-based producer States concomitant with those effects (background papers WP.4 and WP.7, and Chairman's suggestions in CRP.19 and CRP.14). The issue of the projection of demand, supply and price of the metals that may be produced from seabed sources was also discussed (WP.15).

171. The Special Commission then considered the item of assistance measures for developing land-based producer States affected by seabed production. There was a large number of documents - background papers on existing measures of organizations - global, interregional, regional and subregional, intergovernmental and non-governmental (WP.5 and Add.1-4); Chairman's summary regarding relevance of these existing measures for developing land-based producer States (CRP.10 and Add.1); background papers on system of compensation/compensation fund (WP.9, WP.10 and WP.12); background paper on commodity agreements (WP.14); various proposals by delegations (by Pakistan in CRP.6 and CRP.17; by Zimbabwe in CRP.7; by the group of Eastern European Socialist countries in WP.8; by the European Economic Community and its member States in CRP.11, CRP.20 and Rev.1; by the Group of 77 in CRP.12 and CRP.21; and by Australia in CRP.15); and suggestions by the Chairman of the Ad Hoc Working Group (CRP.19 and Rev.1-3).

172. Finally, the Special Commission considered the item of its recommendations to the Authority (CRP.16 and Rev.1), and also carried out negotiations in the Chairman's Negotiating Group on the provisional conclusions contained in CRP.16/Rev.1 which will form the basis of its recommendations to the Authority.

173. In all, the Special Commission completed consideration of 15 working papers (WP) with 11 addenda, and 21 conference room papers (CRP) with 3 addenda and 8 revisions. At the end of each session of the Preparatory Commission, the Chairman of the Special Commission reported to the Plenary on the progress of work during that session. These progress reports, taken together in their chronological order, represent authentic sources for assessing the status of

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work of the Special Commission. The Special Commission also undertook and discussed stock-taking exercises periodically (reflected in WP.11, CRP.5 and CRP.13 and in part II of LOS/PCN/L.103). The progress reports and the stock-taking reports contain important and useful summaries of the deliberations in the Special Commission. They also present the main elements of the views of various delegations on different issues. The texts of the statements of the Chairman to the Plenary, the working papers and the conference room papers considered by the Special Commission are contained in volume III.

C. Outcomes of deliberations: Draft provisional recommendations resulting from the deliberations of Special Commission 1, for submission to the International Seabed Authority

174. At the end of the deliberations of the Special Commission, the Chairman drew up a set of draft provisional recommendations on the matters mandated to it. Most of the delegations felt that these draft provisional recommendations, to a large extent, had bridged the various positions of delegations. Most of the delegations also felt that these draft provisional recommendations could be submitted to the International Seabed Authority for its consideration. These draft provisional recommendations are annexed to this report.

175. In view of the uncertainties, which in recent years have become increasingly wide-ranging, with regard to when and to what extent seabed mining would occur in the future, the mandate of the Special Commission took on an additional dimension. In fact, in view of these uncertainties, the Special Commission was repeatedly cautioned about making any recommendations of a fixed nature. Very early in the deliberations in the Special Commission, a better understanding was achieved about the nature and content of the recommendations to be made to the Authority in view of the relatively long period that may be required before seabed production occurs (see LOS/PCN/L.18).

176. In almost all of the issues falling within the purview of the Special Commission, there were different views of various groups of delegations, initially. At the end, compromises had been achieved on a good number of issues; however, some issues, including some critical ones, remained unresolved, although there was a feeling among many delegations that with respect to some of of these issues, compromises were possible. The draft provisional recommendations annexed to this report include portions marked with square brackets which constitute the areas where compromises could not be reached, at the time of the writing of this report. (It should be noted that the identification of portions to be marked with square brackets could not be completed at the time of the writing of the report. Further review is needed for this purpose.)

177. The initial positions of delegations 2/ on each issue, the compromise-seeking efforts, the nature and content of the resolutions and near-resolutions achieved at the end in a large number of cases, and the divergent positions of delegations on the issues that remained unresolved at the time of writing this report, are more fully described in the statements of the Chairman of the

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Special Commission to the Plenary of the Preparatory Commission, mentioned above. This report presents brief summaries in the following.

1. Projection of future production from the international seabed area

178. Issues resolved. Given the lack of certainty as to which minerals would be produced from the seabed in the future and which metals would be extracted from those minerals, one view was that, in connection with assisting developing land-based producer States, the Authority should concern itself with all possible minerals that could be exploited from the seabed, while the opposing view was to focus on polymetallic nodules alone since those minerals appeared to be the likeliest to be exploited first. It was agreed that:

- The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view the trends and developments regarding seabed minerals other than polymetallic nodules, for example, polymetallic sulphides, cobalt-rich crusts, etc.;

- The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view the trends and developments regarding the other metals contained in polymetallic nodules.

179. It was also agreed that:

- The Authority should collect available data and information on the future seabed mining activities as well as existing forecasts on mineral situation. The Authority should consider and comment upon these forecasts when it has approved the first plan of work for exploitation.

180. Issues close to resolution. With respect to the forecasts of the mineral situation, while one view was that the Authority should carry out forecasting on its own, another view was to rely on existing forecasts alone for the sake of cost-effectiveness. A possible resolution of this issue might be along the following lines:

- The Authority should use existing forecasts as far as practicable, and will carry out forecasting only when no existing forecasts serve its purpose.

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2. Relationship between production from the Area and existing land-based production; identification, definition and measurement of effects of seabed production on developing land-based producer States; determination of the problems/difficulties that would be encountered by the affected developing land-based producer States

181. Issues resolved. Taking into account the fact that seabed mining would only occur in the future, perhaps more than a decade away, it was agreed that:

- At this time the Authority cannot study the above matters with any reasonable degree of precision and accuracy, and therefore the Authority should focus on pertinent data, information and analysis, and on the projected timing of commercial production from the international seabed area.

182. It was also agreed that:

- The best way to assist developing land-based producer States would be to examine the situation on a case-by-case basis;
- In this context, the process can start with the submission of applications for assistance by developing land-based producer States likely to suffer adverse effects from future seabed production, in the cases where the applications are submitted prior to the commencement of commercial production from the seabed, and by developing land-based producer States which consider themselves adversely affected by seabed production, in the cases where the applications are submitted after the commencement of commercial production from the seabed.

183. Once such applications are submitted, one view was that the applicants should be assisted on a more or less automatic basis, while an opposing view was held that the really deserving applicants can best be helped only after a determination has been made to that effect. It was then agreed that:

- The applicants have to:
  - substantiate the potential or actual effects, as the case may be, of seabed production;
  - quantify the effects of seabed production on the export earnings or economy of the applicants;
  - indicate the problems encountered by the applicants directly linked with the effects, in order to determine what measures would assist the applicants best;
- Certain criteria should be applied in processing the applications, and most importantly, an in-depth investigation, on a case-by-case basis, should be carried out to assess the relationship between seabed production and land-based production of the applicant;

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- In this connection, the contents of applications, timing and procedures for submission of applications were agreed upon. An indicative outline of the said in-depth investigation was also agreed upon, which is contained in appendix III to the annex to this report.

184. Issues close to resolution. Agreement is still pending on the procedures for processing applications, including criteria to determine whether in-depth investigations would be initiated. In processing the applications, including carrying out the in-depth investigations on a case-by-case basis, the role of the Authority was extensively debated. One group of delegations maintained that existing organizations assisting developing countries and also active in the mineral sector have the requisite resources, expertise, and infrastructures to deal with similar problems, and it is these organizations which should process the applications. The opposing position was that it was the responsibility of the Authority, in particular the Economic Planning Commission, to process the applications. A possible resolution of this issue might be along the following lines:

- Some kind of cooperative efforts between the Authority and the existing organizations, with the desirable mix of respective roles, can be devised.

185. While it was agreed that certain criteria based on the degree of dependency of the applicant on the four metals concerned (dependency threshold) and on the level of potential or actual effects of seabed production, as the case may be, on the export earnings or economy of the applicant (trigger threshold), and in the cases of applicants with special problems, based on certain safeguard clauses, would be applied in processing the applications, opposing views were held regarding the formulation of the safeguard clause with regard to the trigger threshold. One view was to make the safeguard clause restrictive enough so that the Authority is not overwhelmed with too many applications. Another view was to have a fairly lenient safeguard clause so that applicants are not screened out right at the outset. In the spirit of compromise, a number of alternative safeguard clauses have been suggested by the opposing groups. A possible resolution of this issue might be along the following lines:

- A safeguard clause with regard to trigger threshold, with acceptable degrees of restrictiveness and leniency, can be devised.

3. Formulation of measures to minimize problems/difficulties of affected developing land-based producer States

186. Issues resolved. This was the item which was most extensively debated in the Special Commission. Intensive negotiations over the past few sessions have led to the resolution of a number of issues, as follows:

- Any specific measures or combination of measures that would assist developing land-based producer States can be taken (taking note of paragraph 188 below);

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- Measures such as the application of the provisions relating to unfair economic practices of relevant multilateral agreements, including measures against non-permissible subsidization, can be taken;
- Adequate resources for implementing the measures are expected to be available;
- There are possibilities that the Authority itself may have some resources to contribute to the implementation of measures;
- Assistance to developing land-based producer States should be for the purpose of dealing with changed economic circumstances after seabed production, including economic adjustment as well as diversification, increased efficiency and productivity in the mineral sector, and promotion of growth in other sectors;
- Assistance should be implemented and administered efficiently and in the most cost-effective manner.

187. Unresolved issues. The outstanding issues in which the positions of the various delegations appear to be the hardest to reconcile pertain to the nature and extent of assistance to be provided by the Authority itself to developing land-based producer States and the role that the Authority would have in deciding upon and implementing the assistance measures. Two fundamentally opposing positions were held by the EEC and its member States, on the one hand, and the Group of 77, on the other.

188. As has been stated by the Chairman of the Special Commission: "In my view, the thrust of the position of the EEC and its member States is that assistance to be provided to developing land-based producer States actually suffering or likely to suffer adverse effects from seabed production would take the form of economic adjustment assistance alone, and that the requisite measures would be decided upon and implemented by international and/or multilateral organizations, with the Authority having a catalyst's role. The thrust of the position of the Group of 77, in my view, is that the creation of a compensation fund by the Authority for the purpose of assisting [developing land-based producer State] is a valid and specified option the modalities of which should be discussed and analysed, and that whatever measure(s) of assistance is considered - Authority's own measure of compensation or economic adjustment, bilateral measures, existing economic measures of international or multilateral organizations, commodity agreements, anti-subsidy measures, or any combination thereof - the primary responsibility of deciding upon and implementing the requisite measure(s) lies in the Authority as the 'custodian' of the common heritage of mankind under the Convention" (LOS/PCN/L.88, para. 5).

189. Elaborating on its position, "the EEC stated that the overall concern of the EEC and its member States was to achieve a cost-effective use of resources and that the Authority should, therefore, not duplicate the work of international or multilateral organizations which already provided assistance to developing States in the framework of their respective programmes. In their view, the Authority should act as a catalyst and bring together the relevant organizations" (LOS/PCN/L.88, para. 7).

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190. On the other hand, "the Group of 77 totally rejected attempts by the EEC to shift the primary responsibility of providing assistance [to developing land-based producer States] from the Authority to the other international and multilateral organizations. The Group stated that the proposal by the EEC that requests for assistance should be directed by the Authority to other organizations with the purpose of studies to be carried out, measures to be taken and assistance to be provided by the latter, was not only unacceptable to the Group but clearly would not work. According to the Group, the international or multilateral organizations might not have legal obligations, mandates or budgetary provisions to carry out such studies, take such measures or provide assistance, and it was not indicated in the EEC proposal how the Authority would ensure that these matters would be taken care of" (LOS/PCN/L.88, para. 36).

191. In the above context, the specific unresolved issues in Special Commission 1 are the following:

- Whether a system of compensation of the Authority and the related compensation fund should be included among the measures;
- Whether the Authority would be in a position to contribute to the financing of measures for assistance to developing land-based producer States likely to suffer adverse effects from seabed production, when such assistance would be provided prior to the commencement of commercial production from the Area;
- What should be the role of the Authority in implementing and administering the assistance, in the cases when it is the measures of other organizations that are being applied.

4. Data and information needs

192. Issues resolved. There were some divergences of views between one group of delegations, which maintained that the data and information needs of the Authority should cover a wide range of items, and another group which maintained that the Authority should focus on data and information concerning polymetallic nodules and the metals contained therein, i.e., cobalt, copper, manganese and nickel. Another difference existed with regard to the question whether the Authority itself should collect the relevant data and information or whether it should make use of pertinent data, information, analysis, studies and forecasts of other organizations.

193. In view of the widespread availability of many pertinent data and information, the manner in which the Authority should utilize, collect and maintain information was agreed upon. In this connection it was agreed that:

- The Authority should develop and maintain cost-effective databases; in developing and maintaining such databases, the Authority should first rely upon data and information collected and stored by relevant organizations. The Authority itself shall only collect such data and information which are not collected by other organizations. An

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indicative list of the necessary data and information is given in appendix I to the annex to this report.

194. It was also agreed that:

- The Authority, at the time when seabed mining becomes imminent or operational, would be in a better position to review the requisite categories, specific items under respective categories and the degree of detail, and decide thereupon.

D. Concluding observations

195. Special Commission 1 expended its efforts to the utmost to fulfil the responsibilities mandated to it. In undertaking the studies entrusted to it, most of which were of a highly technical nature, the Special Commission was systematic, objective and incisive. In deciding upon the recommendations to be submitted to the Authority, members of the Special Commission elevated the spirit of compromise to the highest degree possible. Whatever disagreement there remains on details or specific issues, at the time of writing this report, the fundamental issue was agreed upon universally and unanimously that developing land-based producer States, if they are likely to be or are actually adversely affected by seabed production in the future, shall be assisted taking account of paragraph 186 above. The Special Commission conveys its best wishes to the future International Seabed Authority in the discharge of its duties and responsibilities in this area.

196. In conclusion, the Special Commission would like to put on record its deepest appreciation for the unvarying, competent and impartial leadership provided by its Chairman, Mr. Hasjim Djalal (Indonesia), over the entire long span of its effective functioning. The Special Commission also expresses appreciation for the untiring and solution-seeking efforts of the successive Chairmen of the Ad Hoc Working Group, Mr. Karl Wolf (Austria) and Mr. Luis G. Preval Paez (Cuba). The Special Commission thanks the members of the Bureau for their guidance. The Special Commission is deeply grateful to its members without whose contributions, technical and political, its accomplishments would not be possible. The guidance provided at the outset by the first Chairman of the Preparatory Commission, Mr. Joseph Warioba (United Republic of Tanzania) is duly appreciated; the culmination of the Special Commission's work in the present provisional report was possible solely due to the unique leadership of the present Chairman, Mr. Jose Luis Jesus (Cape Verde). The Special Commission would also like to record its thanks for the information, advice, assistance and services provided by the United Nations Secretariat.

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Annex

DRAFT PROVISIONAL RECOMMENDATIONS RESULTING FROM THE DELIBERATIONS OF SPECIAL COMMISSION 1, WHICH CAN BE SUBMITTED TO THE INTERNATIONAL SEABED AUTHORITY

INTRODUCTION

Resolution I, paragraph 5 (i) has mandated the Preparatory Commission to undertake studies on the problems which would be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the international seabed area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the International Seabed Authority thereon.

DRAFT PROVISIONAL RECOMMENDATIONS

CHAPEAU

In carrying out its mandate, including conducting any studies or assessments and establishing any databases, the Authority has to make use of pertinent data, information, analysis, studies and forecasts available from national, subregional, regional, interregional or global organizations, intergovernmental or non-governmental, public or private, and conduct such studies or assessments and establish such databases in the most cost-effective manner and to the utmost degree possible, in cooperation with, and obtaining support from, the relevant organizations.

Section 1. PROJECTION OF PRODUCTION FROM THE AREA

Draft provisional recommendation 1

Minerals of the Area and metals contained in those minerals

(a) The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view the trends and developments regarding seabed minerals other than polymetallic nodules, for example, polymetallic sulphides, cobalt-rich crusts, etc.

(b) The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view the trends and developments regarding the other metals contained in polymetallic nodules.

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Draft provisional recommendation 2

Forecast of mineral situation with or without seabed production

The Authority should collect available data and information on future seabed mining activities in the Area as well as existing forecasts on mineral situation. The Authority should consider and comment upon those forecasts when it has approved the first plan of work for exploitation. If necessary, the Authority could carry out its own forecasting, based on the available data, information, and the existing forecasts on the mineral situation with and without seabed production, which would include, inter alia, supply-demand-price of the four metals concerned, in accordance with the provisions of the chapeau.

Section 2. APPLICATIONS BY DEVELOPING LAND-BASED PRODUCER STATES AND CONSIDERATION OF APPLICATIONS

Draft provisional recommendation 3

Applications by developing land-based producer States likely to suffer adverse effects from seabed production

(a) Before the commencement of commercial production from the Area, a developing land-based producer State which considers itself likely to suffer adverse effects from future seabed production could submit an application for assistance to the appropriate organ of the Authority, through the Secretary-General, in accordance with articles 164 (2) (c) and 151 (10) of the Convention.

(b) In the application, the developing State in question should, inter alia:

(i) identify that it is a developing land-based producer State by providing statistics on its production, volume of exports and export earnings from one or more of the four metals concerned for the last five years, as available;

(ii) present projections of its production, volume of exports and export earnings from one or more of the four metals concerned, in a situation where seabed production does not occur;

(iii) present the same projections of the above variables, in a situation where seabed production occurs;

(iv) make every effort to propose measures, including economic adjustment measures, which are necessary to alleviate its problems and to adapt its economy to the changing circumstances;

(v) present such other data and information as might be required by the Authority.

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(c) The Authority, if requested by the developing State in question, should provide technical assistance in analysing and processing data and information required under (b) above.

(d) Such applications may be submitted at any time after the first submission of a plan of work for exploitation.

(e) Having received the application, the appropriate organ of the Authority shall determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in draft provisional recommendation 5 below.

(f) If the appropriate organ of the Authority determines that an in-depth investigation needs to be carried out, the Authority shall, in the first instance, consult the relevant global, interregional, regional and subregional organizations, which might provide assistance, as to the most appropriate manner such an investigation shall be undertaken. (For a list of the relevant organizations, see appendix II below.) After the consultations, the investigation shall be undertaken along the lines suggested in appendix III below.

(g) The most appropriate manner in undertaking the in-depth investigation may include: (i) investigation to be undertaken by relevant organizations themselves or in cooperation with the Authority; (ii) investigation to be undertaken by the Authority itself or in cooperation with the relevant organizations; (iii) investigation to be commissioned by the Authority.

(h) The investigation shall also study the necessary measures and the assistance that could be provided by the Authority, by the relevant organizations and by the traditional importing States of the relevant metals from the developing State in question.

Draft provisional recommendation 4

Applications by developing land-based producer States which consider themselves adversely affected by seabed production

(a) After the commencement of commercial production from the Area, a developing land-based producer State which considers itself affected by seabed production could submit an application for remedial measures to the appropriate organ of the Authority, through the Secretary-General, in accordance with articles 164 (2) (d) and 151 (10) of the Convention.

(b) In the application, the developing State in question should, *inter alia*:

(i) identify that it is a developing land-based producer State by providing statistics on production, volume of exports and export earnings from one or more of the four metals concerned for the last five years, as available;

(ii) identify the changes that it considers occurred because of seabed production: decrease in price, decrease in volume of exports, decrease in export earnings, other effects on its economy, i.e., decrease in GDP or GNP, decrease in rate of growth of GDP or GNP, decrease in level of employment, decrease in foreign exchange reserves;

(iii) indicate why or how it considers that the above effects have been brought about by seabed production and not as a result of other factors;

(iv) make every effort to propose measures, including economic adjustment measures, which are necessary to alleviate its problems and to adapt its economy to the changing circumstances;

(v) present such other data and information as might be required by the Authority.

(c) The Authority, if requested by the developing State in question, should provide technical assistance in analysing and processing data and information required under (b) above.

(d) Having received the application, the appropriate organ of the Authority shall determine whether sufficient evidence exists to carry out an in-depth investigation by applying the criteria specified in draft provisional recommendation 5 below.

(e) If the appropriate organ of the Authority determines that an in-depth investigation needs to be carried out, the Authority shall, in the first place, consult the relevant global, interregional, regional and subregional organizations, which might provide assistance, as to the most appropriate manner such an investigation shall be undertaken. (For a list of the relevant organizations, see appendix II below.) After the consultations, the investigation shall be undertaken along the lines suggested in appendix III below.

(f) The most appropriate manner in undertaking the in-depth investigation may include: (i) investigation to be undertaken by relevant organizations themselves or in cooperation with the Authority; (ii) investigation to be undertaken by the Authority itself or in cooperation with the relevant organizations; (iii) investigation to be commissioned by the Authority.

(g) The investigation shall also study the necessary measures and the assistance that could be provided by the Authority, by the relevant organizations and by the traditional importing States of the relevant metals from the developing State in question.

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Draft provisional recommendation 5

Criteria for undertaking the in-depth investigation with a view to determining appropriate measures

(This draft provisional recommendation incorporates the final outcomes of the deliberations in the Ad Hoc Working Group, as contained in document LOS/PCN/SCN.1/1992/CRP.18/Rev.4.)

The criteria mentioned in draft provisional recommendations 3 (e) and 4 (d) above should be as follows:

(a) The Authority should use the idea of dependency thresholds for the purpose of determining the importance to a developing land-based producer State of, or its dependence on, copper, nickel, cobalt and manganese for its earnings or for its economy. With regard to the dependency thresholds, the Authority should be guided by the following:

(i) during the relevant period when applications by developing land-based producer States are submitted, either before the commencement of commercial production from the Area or after, those developing land-based producer States which earn 10 per cent or more of their total export earnings per year from the export of one or more of the four metals - copper, nickel, cobalt and manganese - shall be categorized as "dependent";

(ii) if the applications are submitted before the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they are likely to encounter special problems resulting from seabed production, and if the applications are submitted after the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they actually encounter special problems resulting from seabed production, although their export earnings from the export of one or more of the four metals concerned may not account for the specified percentage of their total export earnings, as above, the Authority shall determine, on a case-by-case basis, [taking into account all relevant factors,] [taking into account particularly the effects of such problems on their economy and social development,] whether they can be categorized as "dependent" or not;

(iii) in calculating the percentage of total export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, an average shall be used over a three-year period before the year of application by that developing land-based producer State.

(b) If the dependency thresholds are exceeded, then the Authority shall determine whether the effects that are considered to result potentially from seabed production, in the cases of applicants referred to in draft provisional recommendation 3 above, and the effects mentioned in the applications in the cases of applicants referred to in draft provisional recommendation 4 above, exceed any of the levels specified below (referred to as the trigger thresholds):

(i) in the cases of developing land-based producer States whose applications are submitted after the commencement of commercial production from the Area, the actual fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned, in the situation where there is seabed production, has to be at least 10 per cent in comparison with the situation where there is no seabed production;

(ii) in the cases of developing land-based producer States whose applications are submitted before the commencement of commercial production from the Area, the estimated fall in the export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned that is likely to result in the situation where there is seabed production has to be at least 10 per cent in comparison with the situation where there is no seabed production.

[(iii) if the actual or estimated fall in export earnings of a particular developing land-based producer State from the export of one or more of the four metals concerned is less than 10 per cent but more than 5 per cent in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, taking into account the effects of such fall on its economy and social development, the necessary remedial measure or measures to help that particular developing land-based producer State.]

[(iii) in the cases of developing land-based producer States where the actual or estimated fall in export earnings from the export of one or more of four metals concerned is less than 10 per cent in comparison with the situation where there is no seabed production, but amounts to 2 per cent of the total export earnings (from all exported goods and services), the Authority shall determine, on a case-by-case basis, whether action would be triggered.]

[(c) Replace subparagraphs (a) (ii) and b (iii) by the following:

If the applications are submitted before the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they are likely to encounter special problems resulting from seabed production, and if the applications are submitted after the commencement of commercial production from the Area, in the cases of certain developing land-based producer States which can demonstrate that they actually encounter special problems resulting from seabed production, although their export earnings from the export of one or more of the four metals concerned may not account for the specified percentage of their total export earnings, as above, or although the estimated or actual fall, as the case may be, in their export earnings from the export of one or more of the four metals concerned may not account for the specified percentage, as above, in comparison with the situation where there is no seabed production, the Authority shall determine, on a case-by-case basis, taking into account all relevant factors, bearing in mind considerations of cost-effectiveness and its work efficiency, whether an in-depth investigation needs to be carried out.]

(d) The Authority should consider lowering the figures with respect to dependency thresholds and trigger thresholds taking into account certain factors: production capabilities of a particular developing land-based producer State for one or more of the four metals; projected future production; reserves; GNP and per capita income; population; size of area of a particular developing land-based producer State; and geographical location of a particular developing land-based State. With regard to the lowering of the figures the Authority should be guided by the following: In the cases of the "least developed" among the developing land-based producer States, identified in the relevant United Nations documents, the dependency thresholds and the trigger thresholds shall be reduced by 33 per cent.

(e) Without prejudice to its right to determine other figures, taking into account the prevailing condition or situation at a certain time, the Authority shall apply the figures indicated above.

Section 3. MEASURES TO ASSIST DEVELOPING LAND-BASED PRODUCER STATES

Draft provisional recommendation 6

Assistance to developing land-based producer States likely to suffer adverse effects from seabed production

In reference to draft provisional recommendation 3 (h) above, in accordance with article 150 (h) of the Convention, the necessary and appropriate measures should be considered to provide protection to developing land-based producer States from the adverse effects of seabed production, priority being accorded to developing land-based producer States likely to be most seriously affected, with a view to minimizing their difficulties and helping them to make the necessary economic adjustment.

Draft provisional recommendation 7

Assistance to developing land-based producer States which suffer serious adverse effects from seabed production

In reference to draft provisional recommendation 4 (g) above, in accordance with article[s] 150 (h) [and 151 (10)] of the Convention, the necessary and appropriate measures [, including economic adjustment assistance measures, and, as the situation warrants, possible compensation measures,] should be considered, to assist developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected metal, or in the volume of exports of that metal, to the extent that such reduction is caused by activities in the Area.

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Draft provisional recommendation 8

Existing economic measures

For the purpose of draft provisional recommendations 6 and 7 above, with regard to existing economic measures:

(a) The Authority, in accordance with article 151 (10) of the Convention, should cooperate with United Nations, specialized agencies and other international organizations, as well as with other global, interregional, regional and subregional organizations, to provide assistance to developing land-based producer States in question.

(b) The Authority should assess all of the existing measures, programmes and activities of the United Nations, specialized agencies and other international organizations as well as other organizations at the global, interregional, regional and subregional levels in order to determine how to put them in use for the implementation of provisional recommendations 6 and 7 above.

(c) The Authority should learn from the experiences of the relevant organizations with regard to economic measures that could be of relevance for its purpose.

(d) The Authority should make appropriate cooperative arrangements with the relevant organizations for the purpose of formulating practical modalities in relation to draft provisional recommendations 6 and 7 above.

(e) The Authority should encourage developing land-based producer States to make use of available assistance measures currently being implemented by the United Nations, specialized agencies and other international organizations as well as other global, interregional, regional and subregional organizations, both intergovernmental and non-governmental, for their purposes.

Draft provisional recommendation 9

Measures involving traditional importing States

(This draft provisional recommendation may be modified or deleted, subject to consultations with its original sponsors.)

For the purpose of draft provisional recommendations 6 and 7 above, with regard to measures involving traditional importing States:

The Authority could encourage agreements between a developing traditional exporter State of the affected metal and a State producing a similar metal from the resources of the Area which traditionally used to import that metal from the former. Such agreements would include measures to assist the developing State in question to overcome difficulties which may arise from a reduction in its export earnings as a result of seabed production by the latter. If such agreements are concluded, the Authority should be informed of them.

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Draft provisional recommendation 10

Authority's own measures

(This draft provisional recommendation incorporates the final outcomes of the deliberations in the Ad Hoc Working Group, as contained in document LOS/PCN/SCN.1/1992/CRP.19/Rev.3.)

For the purpose of draft provisional recommendation[s] [6 and] 7 above, with regard to its own measures,

(a) The Authority could consider formulating a measure of its own [, either an economic adjustment assistance measure or, as the situation warrants, a possible compensation measure,] by creating a [special] fund.

(b) Such a fund could be financed from the following sources:

(i) a percentage of the revenues from the profits of the Enterprise;

(ii) a percentage of the revenues from the profits of other operators in the Area; and

(iii) voluntary contributions made by members or other entities.

(c) Subject to criteria to be drawn up by the Authority, the fund would be used to help finance projects and/or programmes in affected developing land-based producer States with the potential to bring about economic adjustment and improve the capability to counter adverse effects of activities in the Area. Such projects and/or programmes could be directed at areas that include: diversification of economies; possibilities of the establishment of viable downstream activities, nationally or regionally; improvement of efficiency and retraining of workforce in the mining sector. The fund could also be used for the provision of technical assistance, and soft loans and/or grants, etc., as appropriate.

[(d) If such a measure as above is formulated, it would be established by the Assembly, upon the recommendation of the Council on the basis of advice from the Economic Planning Commission.]

Draft provisional recommendation 11

Measures against unfair economic practices

(a) Recognizing that the non-permissible subsidized exploitation of the resources of the Area is a factor likely to exacerbate adverse effects on developing land-based producer States, there should be no non-permissible subsidization or other unfair economic practices relating to the exploitation of the resources of the Area. Noting the relevance of article 151 (8), the rights and obligations as defined in relevant multilateral trade agreements should apply to the exploitation of the resources of the Area.

(b) The Authority should establish rules, regulations and procedures for the effective implementation of paragraph (a). In doing so, it should ensure the application of the provisions relating to unfair economic practices of relevant multilateral trade agreements, including those relating to the settlement of disputes.

Draft provisional recommendation 12

International commodity agreements or arrangements

The Authority should keep abreast of the developments with regard to international commodity agreements or arrangements and, in due time, make further assessments, in the context of its own objectives, as to the feasibility and effectiveness of such agreements or arrangements.

Section 4. IMPLEMENTATION OF MEASURES TO ASSIST DEVELOPING LAND-BASED PRODUCER STATES

Draft provisional recommendation 13

Taking steps to implement the measures

(a) In the event, as a result of the in-depth investigation referred to in draft provisional recommendations 3 (f) and (h) and 4 (e) and (g) above, the Authority, the developing State in question, the relevant organizations as well as the traditional importing States, as the case may be, agree on the necessary measures and the assistance to be provided, steps should be taken to implement these in accordance with the normal procedures. The Secretary-General shall inform the Council on such agreement and steps.

(b) Should the agreement call for contribution of the Authority to the implementation of the necessary measures and the assistance to be provided, the Secretary-General shall submit relevant proposals to the Economic Planning Commission and the Finance Committee, which in turn shall submit their recommendations to the Council for final decision.

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Appendix I

NECESSARY DATA AND INFORMATION

Draft provisional recommendation 1

Development and maintenance of databases

(a) The Authority needs data and information to implement the above provisional conclusions.

The Authority should, as far as practicable and in due time, develop and maintain cost-effective databases with respect to data and information that are necessary to implement the tasks assigned to it in the above provisional conclusions. In developing and maintaining such databases, the Authority has primarily to use data and information collected and stored by other national, subregional, regional, interregional or global organizations, intergovernmental or non-governmental, public or private. The Authority itself shall only collect data and information which are not collected by other organizations.

(b) The Authority should assess the requisite categories, degree of detail in each category, and accuracy and reliability of data and information at various time periods and use or collect data and information accordingly.

Draft provisional recommendation 2

Subject areas for data and information

For the purpose of discharging its responsibilities in the most efficient manner, the Authority should collect and maintain data and information in the following four subject areas: (a) seabed minerals; (b) metals and non-metallic elements contained in seabed minerals; (c) developing land-based producer States of metals contained in seabed minerals; and (d) existing economic measures of various organizations which could be of assistance to developing land-based producer States.

Draft provisional recommendation 3

Seabed minerals

With respect to the subject area of seabed minerals, referred to in draft provisional recommendation 2 above:

(a) The Authority should collect and maintain data and information on the trends and developments with regard to the economic exploitability of polymetallic nodules. It should also keep in view the trends and developments with regard to polymetallic sulphides, cobalt-rich crusts and any other seabed minerals whose occurrence is known.

(b) The Authority should collect and maintain information and data on the following categories: (i) known occurrence in the various locations of the seabed categorized by latitudes and longitudes; (ii) estimates of abundance and metal content in each location, if available in the public domain; (iii) characteristics of micro-topography in each location, if available in the public domain; (iv) sediment characteristics in each location, if available in the public domain; (v) water depths in each location, if available in the public domain; (vi) estimates of reserves, potential reserves or resources in various areas of the seabed. Such information and data should also cover seabed minerals in maritime zones under national jurisdiction.

Draft provisional recommendation 4

Metals contained in polymetallic nodules

With regard to metals contained in polymetallic nodules, especially copper, nickel, cobalt and manganese:

(a) The Authority should collect and maintain data and information on the following categories, inter alia: (i) production, by country and world total; (ii) consumption or apparent consumption, by country and world total; (iii) exports, and re-exports, by products of various stages of processing, by country and world total; (iv) imports, by products of various stages of processing, by country and world total; (v) prices, by type of commodity in various terminal markets; (vi) production capacity, by country and world total; (vii) planned capacity expansion, by country and world total; (viii) planned new mine development, by country and world total; (ix) stocks (producers' stocks, consumers' stocks, dealers' stocks), by country and world total; (x) reserves, by country and world total; (xi) resources, by country and world total (wherever applicable data and information should be on an annual basis starting from 1980 onwards). The Authority should also collect and maintain data and information on costs of production from various deposits.

(b) The Authority should collect and maintain information and data on: (i) secondary production and recycling, including the trends and developments in the recent past and the current period as well as the possibilities in the medium-term future; (ii) substitution, including the trends and developments in the recent past and the current period as well as the possibilities in the medium-term future.

(c) The Authority should also collect and maintain data and information on: (i) the extent of bilateral trade, including quantities and values of traded commodities among various trading partners; (ii) the extent of barter trade, including the specification of commodities exchanged in barter, and of the barter trade partners; (iii) bilateral trade agreements and their salient features; (vi) commodity agreements or agreements of a similar nature and their salient features; (v) commodity arrangements, study groups, etc., and their salient features.

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Draft provisional recommendation 5

Developing land-based producer States

With regard to the developing land-based producer States of metals contained in polymetallic nodules:

(a) The Authority should collect and maintain information on the following categories, inter alia: (i) their production of the four metals concerned; (ii) their consumption of the four metals concerned; (iii) their exports of the four metals concerned; (iv) their imports of the four metals concerned; (v) the prices they receive for their exports; (vi) their gross domestic product (GDP) and/or gross national product (GNP); (vii) their total exports of all goods and services; (viii) rate of growth of their GDP or GNP; (ix) their total employment in the economy; (x) their employment in the four metals industries concerned; (xi) their government revenues from the four metals concerned; (xii) the extent of their reserves of the four metals concerned; (xiii) the extent of their resources of the four metals concerned; (xiv) the estimated costs of production from their deposits; (xv) their trade agreements with trading partners and the salient features of these agreements; (xvi) the direction of their trade in the four metals concerned.

(b) To the extent applicable, the Authority should utilize data under draft provisional recommendation 4 above for the purpose of this draft provisional recommendation.

Draft provisional recommendation 6

Making available data and information to States

The Authority should make available data and information to the States in appropriate forms, as requested.

Appendix II

INDICATIVE LIST OF RELEVANT ORGANIZATIONS REFERRED TO IN DRAFT PROVISIONAL RECOMMENDATIONS 3, 4 AND 8, INTER ALIA

A. United Nations, the specialized agencies and other international (global) organizations

1. United Nations Office of Legal Affairs
2. United Nations Department of Economic and Social Development
3. United Nations Development Programme (UNDP)
4. United Nations Conference on Trade and Development (UNCTAD)
5. United Nations Environment Programme (UNEP)
6. United Nations Institute for Training and Research (UNITAR)
7. United Nations University (UNU)

8. African Institute for Economic Development and Planning (IEDP)
9. UNCTAD/GATT International Trade Centre (ITC)

10. Economic Commission for Africa (ECA)
11. Economic and Social Commission for Asia and the Pacific (ESCAP)
12. Economic Commission for Latin America and the Caribbean (ECLAC)
13. Economic and Social Commission for Western Asia (ESCWA)
14. Economic Commission for Europe (ECE)

15. International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), International Finance Corporation (IFC)
16. International Monetary Fund (IMF)
17. United Nations Industrial Development Organization (UNIDO)
18. General Agreement on Tariffs and Trade (GATT)
19. United Nations Educational, Scientific and Cultural Organization (UNESCO)
20. International Labour Organization (ILO)

B. Regional development banks

21. African Development Bank (ADB)
22. Asian Development Bank (AsDB)
23. Inter-American Development Bank (IDB)

C. Intergovernmental organizations

24. European Communities (EC)
25. Organisation for Economic Cooperation and Development (OECD)
26. Organization of African Unity (OAU)
27. Organization of American States (OAS)
28. Commonwealth Secretariat
29. International Copper Study Group (ICSG)
30. International Nickel Study Group (INSG)
31. Western African Economic Community
32. Association of South-East Asian Nations (ASEAN)
33. Asian-African Legal Consultative Committee (AALCC)

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34. Permanent Commission for South Pacific
35. Andes Development Corporation
36. League of Arab States

D. Non-governmental organizations

37. International Council of Scientific Unions (ICSU)
38. International Ocean Institute (IOI)
39. International Institute for Applied Systems Analysis (IIASA)

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Appendix III

INDICATIVE OUTLINE OF THE DATA TO BE COLLECTED AND STUDIES TO BE CARRIED OUT FOR THE IN-DEPTH INVESTIGATION REFERRED TO IN DRAFT PROVISIONAL RECOMMENDATIONS 3 (f) AND 4 (e)

(a) Identification of resources of the Area exploited, and the metals extracted from these resources, referred to in draft provisional recommendation 1 above.

(b) Forecast or estimation of volume of production of each metal from the Area, as the case may be, in cooperation with pioneer investors and other contractors, referred to, in part, in draft provisional recommendation 2 above.

(c) Assessment of the relationship between production from the Area and land-based production, within the context of the world supply-demand situation and the different world markets as well as different trade practices; such assessment should indicate the short-term (less than 5 years), medium-term (5 to 10 years) and long-term (longer than 10 years) trends.

(d) Formulation of a methodology to establish to what extent effects on price or volume of exports of a metal of a developing land-based producer State can potentially result from or are caused by production of the metal from the Area. Such a methodology shall take into account: world metal market situation; change in consumption patterns; production from maritime zones under national jurisdiction; substitution; recycling; technological developments; other relevant factors, such as the general economic conditions, the government policies and the exhaustion of deposits within national jurisdiction of the developing land-based producer States concerned.

(e) Quantification of effects on exports.

(f) Quantification of effects on economies, taking into account the various factors such as:

(i) unemployment, to the extent that it is caused by or related to reduced production of the four metals;

(ii) lack of development as a result of reduced government revenues from the four metals;

(iii) side effects, such as reduced production of accessory minerals as a result of the reduction in the production of the four metals;

(iv) multiplier effects on the economy as a whole.

(g) Investigation of the problems directly linked with the effects, including assessment of capabilities and limitation of the affected State to counter or control the effects.

(h) When applications are made simultaneously, a study should be made in order to determine in what way the adverse effects of seabed production would cause more problems to certain developing land-based producer States as compared to other land-based producers, in order to establish a priority.

(i) The measurement of actual effects should be carried out only after seabed production occurs.

Chapter III

PROVISIONAL FINAL REPORT OF SPECIAL COMMISSION 2*

A. Mandate of the Special Commission

197. The Special Commission for the Enterprise, Special Commission 2, was established in accordance with resolution I, paragraph 8, of the United Nations Convention on the Law of the Sea. Under resolution I, paragraph 8, the Special Commission for the Enterprise is entrusted with the task of:

(a) Taking all measures necessary for the early entry into effective operation of the Enterprise;

(b) Performing the functions referred to in paragraph 12 of resolution II.

198. Paragraph 12 of resolution II of the United Nations Convention on the Law of the Sea, in its _chapeau_, establishes the objective of ensuring that the Enterprise is able to carry out activities in the Area in such a manner as to keep pace with States and other entities. To that end, it requires that

"(a) every registered pioneer investor shall:

(i) carry out exploration, at the request of the Commission, in the area reserved, pursuant to paragraph 3 in connection with its application, for activities in the Area by the Authority through the Enterprise or in association with developing States, on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;

(ii) provide training at all levels for personnel designated by the Commission;

(iii) undertake before the entry into force of the Convention, to perform the obligations prescribed in the Convention relating to transfer of technology;

"(b) every certifying State shall:

(i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the Convention, upon its entry into force; and

(ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons."

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* This chapter is a revised version of the report which originally appeared in document LOS/PCN/SCN.2/1992/CRP.6.

B. Programme of work

199. The Special Commission commenced its work under the chairmanship of Mr. Lennox Ballah of Trinidad and Tobago with the adoption of its programme of work contained in document LOS/PCN/SCN.2/1984/CRP.1 and decided to give first priority to its consideration of the application of paragraph 12 of resolution II, and consideration of the preparatory measures that could be undertaken in accordance with the provisions of that paragraph; secondly, to a consideration of the structure of the Enterprise, and in particular, the structure and requirements for its start-up and establishment; and thirdly, to an examination of operational options, beginning with an evaluation of the joint venture option for the initial operation of the Enterprise, as follows:

(1) Application of resolution II, paragraph 12, including:

(a) Development of a training scheme;

(b) Other measures to be taken under paragraph 12;

(2) Establishment of the organizational structure of the Enterprise:

(a) Draft rules of procedure of the Governing Board;

(b) Draft Staff Rules;

(c) Draft Financial Rules;

(d) Establishment of the principal office of the Enterprise;

(e) Administrative and financial arrangements;

(3) Development of policies and feasibility studies in preparation for the early entry into effective operation of the Enterprise:

(a) Elaboration of operational options;

(b) Project formulation;

(c) Supplementary procedures for the conduct of operations;

(4) Formulation of recommendations for the initial operation and administration of the Enterprise;

(5) Other questions, including:

(a) Coordinative arrangements for dealing with matters relating also to the work of other bodies of the Preparatory Commission;

(b) Establishment of an information programme on seabed resource development, including, in particular, an information system on technology suppliers.

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200. Item (4) in the programme of work was recognized as mostly being a distillation of the conclusions that would be reached in the course of work on items (1), (2) and (3). With regard to item (5), it was understood that the need for coordination with other bodies would be addressed as and when necessary, and that the requirement for an information programme on seabed resource development, as indicated in item (5) (b), would be identified in the course of the Special Commission's future work. 3/

201. The Special Commission initially envisaged its work as encompassing the full range of preparatory work needed to facilitate the implementation of the Convention and to assure the ability of the Enterprise "to keep pace" with registered pioneer investors, in the event that seabed mining was ready to commence at the time of entry into force of the Convention. It thus adopted a comprehensive approach which would allow it to produce a detailed set of generally applicable recommendations and draft rules as to the organizational structure, policies, management and operations of the Enterprise, as well as a set of distinct recommendations with respect to the initial operations and administration of the Enterprise, recognizing the need to allow for evolution. 4/ This approach also determined the scope and content of its initial working papers. 5/

202. As a result of the decision taken by the Preparatory Commission that the General Committee should act on its behalf as the executive organ for the administration of resolution II, the special preparatory functions set forth in paragraph 12 of resolution II, with the exception of the development of a training scheme, were dealt with outside Special Commission 2. 6/

203. It must be noted also that the likelihood of the entry into force of the Convention being coincidental with the economic viability of a seabed mining industry was increasingly questioned. This affected the approach adopted by the Special Commission and the priorities accorded to the different elements of its work. During the resumed fourth session (1986, New York), when it became clear that the prospects for seabed mining were unfavourable and that there was little likelihood of its coincidence with the entry into force of the Convention, certain modifications in the programme of work of the Special Commission were introduced. Several of these modifications reflected a new understanding of the general scope and content of the recommendations that the Special Commission could most usefully make to ensure "early entry into effective operation of the Enterprise" (its mandate under resolution I) and its ability to keep pace with the activities of pioneer investors (its mandate under resolution II). Three sufficiently distinct sets of recommendations were therefore contemplated:

(a) Those that addressed the first operations of the Enterprise and that would necessarily need to take account of the economic conditions for seabed mining;

(b) Those that dealt with basic administrative, management and procedural matters, that would be unaffected by the timing of operations and that would permit the Enterprise to function as a distinct entity, without unnecessary delay;

(c) Those that addressed the implementation of paragraph 12 of resolution II and that may or may not be organically linked to recommendations on the first operation. 7/

204. Of particular note was the Special Commission's introduction of a special mechanism (the Chairman's Ad Hoc Advisory Group on Assumptions) to monitor economic factors pertinent to the question of seabed mining viability. That need, shared also by Special Commission 1, had not been envisaged at the outset. Also notable was its general conclusion that virtually any concrete recommendation it could make on both operational and organizational matters would need to be revised as and when economic prospects for mining improved. 8/

205. As a result, from 1986 to the present, the work of Special Commission 2 focused on the following: development and establishment of a training programme; organizational structure of the Enterprise and consideration of a recommendation regarding a pre-operational Enterprise; operational options of the Enterprise including project feasibility analysis, an agreed set of working assumptions and the initial operation of the Enterprise.

C. Concise summary of the overall accomplishments of the Special Commission

1. Application of resolution II, paragraph 12

(a) Development of a training scheme

206. With respect to its mandated functions under resolution II, the Special Commission, from the beginning, paid special attention to the need to organize a training scheme. While the basic design of the training programme was grounded on the scope of the training obligation of the pioneer investors, Special Commission 2 began to introduce an important distinction in its work as between the formulation of basic planning guidelines and modalities for a training programme, and decisions as to its actual implementation.

207. An Ad Hoc Working Group on Training with a mandate to draft the principles, policies, guidelines and procedures for a Preparatory Commission training programme was established by the Special Commission during the fifth session of the Preparatory Commission (1987, Kingston). Conscious of the need to reflect all interests and views, it was agreed that the Ad Hoc Working Group on Training would include the four pioneer investors (USSR, France, Japan and India), Canada, Italy, China, Kenya, Tunisia, Bangladesh, Malta, Colombia, Jamaica, provisionally Denmark, the United Nations Council for Namibia and a representative from the International Ocean Institute. 9/ At the resumed sixth session (1988, New York), the Ad Hoc Working Group on Training submitted to the Special Commission document LOS/PCN/SCN.2/1988/CRP.3 entitled "Principles and policies for a training programme to be instituted by the Preparatory Commission". At the seventh session (1989, Kingston), it submitted to the Special Commission document LOS/PCN/SCN.2/1989/CRP.4 entitled "Draft guidelines and procedures for the implementation of the training programme". Special Commission 2 concluded that there was basic agreement on the documents and that they provided the basis for its work on training. 10/ Following a request by

the Special Commission, these documents went through a few drafting changes to become document LOS/PCN/SCN.2/L.6/Rev.1, "Principles, policies, guidelines and procedures for a Preparatory Commission training programme".

208. LOS/PCN/SCN.2/L.6/Rev.1 was adopted first by Special Commission 2 and then by the Preparatory Commission during the resumed seventh session (1989, New York). During the eighth session (1990, Kingston) the Preparatory Commission adopted LOS/PCN/SCN.2/L.7, "Implementation of the Preparatory Commission Training Programme. Recommendations of Special Commission 2".

209. During the ninth session (1991, Kingston) the Training Panel was constituted, with 21 members selected on the basis of the principle of equitable geographical distribution and including one expert from each of the registered pioneer investors. 11/ The Preparatory Commission appointed the Chairman of Special Commission 2 as an ex officio member of the Training Panel. The Panel held its first meeting during the resumed ninth session (1991, New York) and decided that traineeships should cover five engineering disciplines (chemical/metallurgical, electrical, electronic, mechanical and mining), marine geology, marine geophysics and marine ecology, as set forth in LOS/PCN/BUR/R.9. Documents LOS/PCN/SCN.2/L.7 and LOS/PCN/BUR/R.9 are reproduced in volume 4.

210. At the tenth session (1992, Kingston), the Training Panel met for the second time and approved the training programmes offered by France and Japan (each of which was for three traineeships, starting in November 1992 and May 1993 respectively). It established the minimal qualifications of applicants for the training programme, developed criteria for selecting candidates and approved a note verbale announcing the training programmes of France and Japan. 12/ The Training Panel met during the first week of the resumed tenth session (1992, New York). At that session, it selected six candidates for the programmes offered by Japan and France from 67 applications and approved the revised training programmes offered by India and the Russian Federation, both of which are to start in October 1993.

211. At the fourth meeting of the Training Panel (1993, Kingston), the Panel approved the training programmes of China and the Interoceanmetal Joint Organization (Bulgaria, Cuba, the Czech and Slovak Federal Republic and the Russian Federation). It selected five candidates for the traineeships under the training programmes offered by India and the Russian Federation and deferred the selection of a candidate for the traineeship in chemical engineering offered under the training programme of India in the absence of a qualified candidate. The Training Panel also reviewed the training programme offered by Germany, requesting further details on the type of training to be offered, the disciplines involved and the need for that programme to conform to the format of the programmes which had already been adopted, and took note of the information provided by the delegation of France with regard to the implementation of its training programme. 13/

212. In accordance with step 1, paragraph (c), of LOS/PCN/SCN.2/L.7, the Panel requested the Division for Ocean Affairs and the Law of the Sea to make inquiries with other technologically advanced States and institutions about educational and training facilities in areas relevant to seabed and ocean exploration, including those relating to the monitoring of deep seabed

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environments, and to submit this information for the consideration of the Panel at its next meeting.

213. At its fifth meeting, the Training Panel will, inter alia, select one trainee for the traineeship in chemical engineering under the Indian training programme, select eight candidates for the training programmes of China and the Interoceanmetal Joint Organization, examine the revised training programme of Germany with a view to circulating a note verbale announcing that programme, consider the progress reports on those training programmes that are being implemented, consider the format for the training certificates to be issued to successful trainees by the Preparatory Commission and consider the report by the Secretariat on the educational and training facilities in other technologically advanced States relevant to seabed and ocean exploration.

(b) Other measures to be taken under paragraph 12

214. The other measures under paragraph 12 of resolution II required that:

(a) Every registered pioneer investor should:

(i) Carry out exploration, at the request of the Commission, in the area reserved for activities by the Authority through the Enterprise or in association with developing States, on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;

(ii) Undertake, before the entry into force of the Convention, to perform the obligations prescribed in the Convention relating to transfer of technology;

(b) Every certifying State should:

(i) Ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the Convention, upon its entry into force;

(ii) Report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons.

215. As noted earlier, with the exception of the establishment of a training scheme, the special preparatory functions set forth above were assigned to the General Committee. The Special Commission did, however, note the important linkage between the exploration of the Authority's reserved area and the Preparatory Commission's training programme and made a recommendation to take account of this linkage for the transitional pre-operational period (see sect. III.4 below).

2. Establishment of the organizational structure of the Enterprise

216. As early as its initial exchange on the Enterprise's organizational structure and given its perception of present and predicted economic conditions, the Special Commission called for a pragmatic approach to planning for the "early entry into effective operation of the Enterprise" and stressed that the initial Enterprise might best be regarded as a nucleus establishment capable, however, of maturing quickly under favourable operating conditions. 14/

217. At the request of the Special Commission in 1984, document LOS/PCN/SCN.2/WP.2, entitled "The Enterprise - start-up requirements and preparatory measures", was prepared to facilitate its work in this regard. As a result of its discussion on this working paper, the Special Commission recognized the need to elaborate a possible structure and organization for the Enterprise that took into account the extent to which operational modalities would affect organizational matters, and also the need to establish the Enterprise with a minimal and flexible arrangement that would enable it to respond to favourable operating circumstances.

218. An outgrowth of the discussions of LOS/PCN/SCN.2/WP.2 was an additional request concerning the development of an expert team for the Enterprise and the process for facilitating their recruitment by the Enterprise. Document LOS/PCN/SCN.2/WP.7, entitled "Development of an ad hoc expert core group for the Enterprise to assist the Preparatory Commission", was prepared in response to this request. At the resumed fourth session (1986, New York), the Special Commission requested a new working paper that would be useful in a discussion of an initial "nucleus" Enterprise should delays in the projected start-up of seabed mining persist at the time of the establishment of the Enterprise. A "nucleus" Enterprise would be recommended in order to provide for continued pre-feasibility work. 15/

219. The working paper prepared by the Secretariat at the Special Commission's request, LOS/PCN/SCN.2/WP.12, entitled "A nucleus Enterprise", bore a resemblance, in terms of functions, to the earlier notion of a "core expert group" contained in document LOS/PCN/SCN.2/WP.7. The report contained provisions on the monitoring, evaluation and continued preparatory functions that would need to be performed in the pre-feasibility period, as well as provisions regarding the necessity of keeping personnel and costs down to a minimum during that period. In addition, the Special Commission requested a working paper on the general framework provided in annex IV to the Convention which contains the Statute of the Enterprise. 16/ Working paper LOS/PCN/SCN.2/WP.16 of 22 February 1989, entitled "Provisions of the Convention relating to the structure and organization of the Enterprise", was the response to this request.

220. Special Commission 2 started consideration of working paper LOS/PCN/SCN.2/WP.16 during the seventh session (1989, Kingston). In its consideration of this working paper, the Special Commission set as its purpose: to allow the Preparatory Commission to comment on provisions of the Convention in the interest of promoting reasonable interpretation; to suggest additional draft provisions to facilitate effective application; and to suggest additional

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draft rules on matters such as the confidentiality requirement, on which the Convention has no rule relating to the Enterprise.

221. The Special Commission completed its discussions of working paper LOS/PCN/SCN.2/WP.16 at the ninth session (1991, Kingston) and requested the Secretariat to issue a new paper which would not only incorporate the provisions of the Convention relating to the structure and organization of the Enterprise as contained in working paper 16, but would also contain the annotations which were made to that working paper. That paper was issued as document LOS/PCN/SCN.2/L.8 at the resumed ninth session (1991, New York) but did not become the subject of discussion until the tenth session (1992, Kingston). Following an article-by-article reading of document LOS/PCN/SCN.2/L.8, the Special Commission made some additional annotations to that document. The complete set of annotations to document LOS/PCN/SCN.2/WP.16 are contained in LOS/PCN/SCN.2/L.8/Rev.2, which is reproduced in volume 4.

222. In a statement on document LOS/PCN/SCN.2/L.8 at the tenth session (1992, Kingston), the Group of 6 pointed out that since the Third United Nations Conference on the Law of the Sea many important changes had occurred and that changing circumstances might affect the provisions of the Convention relating to the Enterprise. Consequently, the Group thought it was inappropriate at that moment to annotate provisions of which one did not know whether and under what circumstances they would be applied. 17/

3. Development of policies and feasibility studies in preparation for the early entry into effective operation of the Enterprise

(a) Elaboration of operational options/project formulation

223. From the first consideration of this topic, attention was focused on the initial period, which was described in 1984, in LOS/PCN/SCN.2/WP.2, as beginning "under favourable conditions" in the third year, with the pre-investment stage of operations in the fifth year. At the same time, it was also recognized that there would be a critical period in the six months following entry into force, since it would be then that the financial situation would become clear and when registered pioneer investors would be anticipated to exercise their acquired rights.

224. Also evident from the beginning of its work had been the Special Commission's recognition of the need to give priority attention to joint ventures as an operational option of the Enterprise, particularly for its first venture. 18/

225. The first discussions of the Enterprise's operations took place during the third session (1985, Kingston) on the basis of LOS/PCN/SCN.2/WP.6 of 5 February 1985, which had been prepared in response to the Special Commission's request for a complete project profile for the Enterprise, as provided for in article 170 of the Convention. 19/ That working paper, entitled "Project profile of a deep seabed mining operation by the Enterprise", which relied for its data and methodology on pre-existing, readily available studies,

concentrated on evaluating the options available to the Enterprise (i.e., joint ventures, leasing/service contracts, Enterprise as sole operator and mixes thereof according to the phase of work). In the end, these options are to be determined in accordance with financial and manpower requirements.

226. While that working paper was predicated on the underlying assumption of the perceived economic viability of seabed mining, questions were none the less raised as to the basic framework of the profile, particularly as to the parameters listed in its paragraph 20, and their reflection of present and predicted conditions in the minerals industry and markets. 20/

227. To demonstrate some of the issues involved, the delegation of Australia undertook a special study, incorporating more recent data, and submitted it in document LOS/PCN/SCN.2/WP.10 of 14 January 1986, entitled "Economic viability of deep seabed mining of polymetallic nodules" at the fourth session (1986, Kingston). That working paper gave a pessimistic assessment of the economic viability of seabed mining which was attributed to the state of the metal markets. It stated that in the light of the prevailing economic trends, particularly the metal prices for cobalt, copper, manganese and nickel, increases in aggregate metal prices, to as high as twice their levels at March 1985, would be required to make the mining venture viable. It concluded that, given the metal price outlook, deep seabed mining for polymetallic nodules was unlikely to be undertaken on a commercial basis for the foreseeable future.

(b) Chairman's Advisory Group on Assumptions

228. Consequent upon the discussion of LOS/PCN/SCN.2/WP.10, the Special Commission recognized the need to keep the matter of assumptions under review. It therefore created, during the resumed fourth session (1986, New York), an Ad Hoc Group on Assumptions, later to become a permanent feature of the Special Commission's work. The Group was required to report regularly as to whether, in the light of the latest data, a new study updating LOS/PCN/SCN.2/WP.10 could be undertaken by the Government of Australia. At the resumed tenth session the Group submitted a comparative study of the Australian and French models and concluded that neither of them yielded the required discounted cash flow rate of return (DCFROR). The recommendations of the Special Commission with regard to continued work on assumptions are contained in the annex to this report.

(c) Initial operations of the Enterprise

229. From its first consideration of this topic, the Special Commission recognized the need to give priority attention to joint ventures as an operational option of the Enterprise, particularly for its first venture (1985, Kingston). The advantages of joint ventures from the viewpoint of practicality and minimization of risks were stressed, as were the advantages for both mining and processing, particularly with regard to transfer of technology and development of manpower. Nevertheless, it was agreed that the first option to be studied in detail was that of the Enterprise as sole operator of a fully integrated project.

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(i) The Enterprise as sole operator

230. The initial working paper utilized by the Special Commission in its consideration of the operational option of the Enterprise as sole operator was LOS/PCN/SCN.2/WP.2, "The Enterprise, start-up requirements and preparatory measures". Consequent upon the discussions of LOS/PCN/SCN.2/WP.6 and its addendum 1 and corrigendum 1, and LOS/PCN/SCN.2/WP.10 and its addendum 1, the Special Commission decided that any concrete recommendation it drew on operational matters would need to be revised as and when economic prospects for mining improved. As a result, consideration of the Enterprise as sole operator in its initial operations was deferred. 21/

(ii) The Enterprise in a joint venture

231. Throughout its deliberations on operational options, preference was expressed by the Special Commission for the joint venture as the appropriate contractual device to ensure that the seabed was efficiently exploited. In this regard, a number of working papers were considered by the Special Commission. At the second session (1984, Kingston) a preliminary note on the Enterprise prepared by the secretariat of the Asian-African Legal Consultative Committee (AALCC) was presented to the Special Commission. At the same session, the delegation of Austria presented a proposal to establish a Joint Enterprise for Exploration, Research and Development in Ocean Mining (JEFERAD), contained in document LOS/PCN/SCN.2/L.2 and Add.1.

232. LOS/PCN/SCN.2/WP.3, "Information note on elements of joint ventures", was requested by the Special Commission and considered by it during the resumed second session (1984, Geneva). This working paper outlined considerations relevant to the conclusion of joint venture agreements. LOS/PCN/SCN.2/WP.4, "Proposal on joint venture" - Proposals by the delegations of Belgium, France, the Federal Republic of Germany, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland", was also presented at the resumed second session. This working paper, while recognizing that no hard and fast criteria could be established for a successful joint venture agreement, noted the importance of allowing the Governing Board of the Enterprise sufficient flexibility when negotiating with prospective partners. It discussed some of the key elements for establishing a successful joint venture agreement based on a model agreement contained in document LOS/PCN/SCN.2/WP.5, "A model joint venture agreement for seabed mining", submitted by the delegation of the Federal Republic of Germany.

233. LOS/PCN/SCN.2/WP.5 contained a model agreement for establishing a joint venture between the Enterprise and national or transnational, private or State-owned companies or consortia. The model agreement was not meant to tie discussions down to the specific clauses contained therein, but rather to identify the issues that would have to be addressed and equitably solved if a mutually beneficial joint venture relationship was to be concluded between the concerned parties. At the request of the Special Commission, during the fifth session (1987, Kingston), the delegation of Colombia submitted document LOS/PCN/SCN.2/WP.14, "The international venture". This study provided a further analysis of a joint venture between pioneer investors and the Enterprise,

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placing special emphasis on exploration, research and development, and the training of personnel.

234. At the resumed eighth session (1990, New York), the Special Commission began consideration of document LOS/PCN/SCN.2/WP.18, "Draft basic joint venture contract: explanatory memorandum", and document LOS/PCN/SCN.2/WP.18/Add.1, "Draft basic joint venture contract", which were prepared by the Secretariat to facilitate concrete discussions on joint ventures.

235. In introducing the working papers, the Special Representative of the Secretary-General for the Law of the Sea recalled that during the meetings of the Seabed Committee and the Third Conference on the Law of the Sea considerable importance had been given to the idea of a joint venture as the sole mechanism for the development of the resources of the seabed. He noted that in response to the request by the Special Commission, the Secretariat had assembled information on joint ventures in the petroleum, mining and other industries to produce the single model contained in LOS/PCN/SCN.2/WP.18. He pointed out that the model did not contain all the details which were needed for a joint venture arrangement.

236. During the discussions of the model contract contained in LOS/PCN/SCN.2/WP.18, questions were raised as to why the incorporated joint venture model had been selected in preference to the contractual joint venture. It was pointed out that the model contract for an incorporated joint venture could be readily adapted to a contractual joint venture by including the standard provisions which formed part of the rules governing incorporated companies in national laws. It was also pointed out that those provisions had not been reproduced for the working paper because they would only have added bulk to the model without adding much to the principles of joint venture arrangements which was the objective of the discussions by the Special Commission.

237. It was noted that most joint ventures dealt with research and development, which went hand in hand with exploration and the development of human resources. It was pointed out that the provisions of LOS/PCN/SCN.2/WP.18 focused on the assets of the joint venture without paying particular attention to the issue of intellectual property and the ownership of patents which were involved in the transfer of technology and the joint development of technology. It was noted that in order for the Enterprise to be competitive provisions must be introduced in the model to take these factors into account.

238. It was agreed by the Special Commission that the joint venture option was the option to be utilized by the Enterprise in its initial operation but that it should be left to the Enterprise to determine the option to select for its operations when it became a fully fledged operation.

239. Annotations to the clauses of the model joint venture and its explanatory memorandum contained in documents LOS/PCN/SCN.2/WP.18 and Add.1 are presented in document LOS/PCN/SCN.2/WP.18/Rev.2 which is reproduced in volume 4.

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240. In a general statement on the subject of joint ventures at the tenth session (1992, Kingston), the Group of technologically advanced States reaffirmed its general acceptance of the joint venture option as the preferred option for the Enterprise in its initial operations, noting the advantages this option offered and the fact that it might contribute to solving problems raised by some of the provisions of the Convention and its annexes. The Group, pointing out that the provisions of joint venture agreements depended on the particular characteristics of the project and the objectives of each of the participants, held the view that it was premature to decide on any clauses of a future joint venture agreement at that stage.

4. Formulation of recommendations on the initial operations and administration of the Enterprise (transitional arrangements)

241. In the discussions on a nucleus Enterprise it was pointed out that when Part XI of the United Nations Convention on the Law of the Sea was negotiated, the pre-operational period had not been foreseen and as a result no institutional arrangement had been provided for it. It was generally agreed that in the interests of economy, the pre-operational period could be broken down into an early or initial stage and subsequent stages as economic circumstances dictated. It was also agreed that the structure of the institutional arrangement during this period should evolve in the same way.

242. On the basis of this discussion the Chairman put forward suggestions on transitional arrangements for the Enterprise (LOS/PCN/SCN.2/1990/CRP.5) in order to facilitate further discussion on this subject at the eighth session (1990, Kingston).

243. The Special Commission undertook a paragraph-by-paragraph reading of this document with a view to reaching agreement on, inter alia, the purpose of transitional arrangements, the functions to be performed under transitional arrangements, the status and structure of the institutional arrangements and rules applicable to the transitional arrangements. In so doing, the Special Commission agreed that form must follow function.

244. The Special Commission agreed on the functions to be performed under the transitional arrangements as contained in section II of document LOS/PCN/SCN.2/1990/CRP.5 and as amended by the suggestions contained in document LOS/PCN/SCN.2/1991/CRP.5/Add.1. In addition it agreed to delete in the first line of paragraph 4 of section II of document LOS/PCN/SCN.2/1990/CRP.5 the words "in the same period".

245. It was not possible to reach agreement on the status and structure of the institutional arrangement of the early or initial stage of the pre-operational period. The view was expressed that there was no need to establish the Enterprise at the early stage of the pre-operational period and there was a stated preference for an arrangement whereby the Governing Board of the Enterprise was substituted for by the Assembly and the Council and the Director-General by an interim coordinator but that when commercial operations became feasible, then the members of the Governing Board and the Director-General could

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be elected. The view was further expressed that the interim coordinator would be assisted by experts who would be part of the secretariat of the Authority, and together they would perform the functions agreed upon by the Special Commission as being necessary during the early or initial stage of the pre-operational period and such other functions as entrusted to them by the Council. The number of experts could be increased by decisions of the competent organs of the Authority in accordance with the volume of work. The remuneration of the interim coordinator and experts would be paid out of the administrative budget of the Authority. On the basis of developments in the seabed mining sector, the Council and the Assembly would decide when to set up the Enterprise and to elect the Governing Board and the Director-General.

246. Another view was for the establishment of the Enterprise during the early or initial stage of the pre-operational period. There would be a small interim Governing Board and an interim Director-General. The policies of this nucleus Enterprise would reflect its autonomy and the state of affairs with respect to the prospects for seabed mining. The interim Director-General would be assisted by a small group of experts drawn from the secretariat of the Authority. The interim Director-General and the experts would carry out the functions that had been agreed to in paragraph 1 of part II. The number of experts would be increased according to the volume of work. The remuneration of the interim Director-General and experts would be paid out of the administrative budget of the Authority. The Assembly and Council would decide when to establish the fully fledged Enterprise, enlarge the Governing Board and thus establish the Enterprise according to its constitution.

247. At the end of the tenth session (1992, Kingston), the Special Commission agreed to make the following recommendations to the Assembly:

> "Pursuant to its mandate, Special Commission 2 had devoted considerable effort in grappling with the issue of the status and structure of the institutional arrangements during the pre-operational period. Most recently, this has occurred in CRP.5 and Addenda 1 and 2, which have been debated both formally and informally. What has emerged from these discussions is a widely held view that, in the light of the prolonged delay in the development of deep seabed mining activities, it is unlikely that the Enterprise would be able to undertake operational activities for quite some time. Therefore, in the initial phase what will likely be needed is some initial institutional arrangements which could be activated as circumstances dictate. At the same time, it was recognized that the operations of the Enterprise should be based on sound commercial principles and that it should be autonomous and free from political domination.
>
> "Just as the drafters of the Convention were unable successfully to forecast when commercially viable seabed mining would commence, we should also avoid a similar peril and not, at the present time, attempt to devise concrete operational structures for the Enterprise in the interim period. Let us remember that our task in Special Commission 2 is to provide our best advice, based on all available information, to the Assembly on how to deal with these unforeseen circumstances.

> "The proposal, therefore, is that the Special Commission advise the Assembly to proceed on the basis of the evolutionary approach where the functions of the Enterprise, laid down in the Convention for its efficient operation, are filled and carried out according to the dictates of the prevailing circumstances. We could go as far as to say that the functions enumerated in part II of CRP.5 represent our best judgement on the activities to be undertaken by the Enterprise in this interim period.
>
> "The Assembly will have to judge the best way in which these and any other functions are to be carried out and the functional mechanism and initial status and structure of the Enterprise during the transitional period. Moreover, it should also be kept in mind that there is a general view on the need to minimize the cost to States Parties while at the same time safeguarding both the effective operation of the Enterprise and its ability to evolve in an orderly fashion, as circumstances dictate, into a viable participant in deep seabed mining."

248. The recommendation was agreed to by the Special Commission subject to conditions made by two major interest groups in the Special Commission. The Group of technologically advanced States agreed to the recommendation on the understanding that when the Assembly took its decision, it would be by consensus. The second group, comprising developing States, agreed to the recommendation subject to the condition that the initial structure proposed was understood to be for the pre-operational period only and that when the Assembly decided to enlarge the Enterprise, its decision would be taken in accordance with the modalities set forth in the Convention.

249. Annotations made in Special Commission 2 on the suggestions of the Chairman of the Special Commission to facilitate discussions on transitional arrangements for the Enterprise contained in documents LOS/PCN/SCN.2/1990/CRP.5 and LOS/PCN/SCN.2/1991/CRP.5/Add.1 are presented in document LOS/PCN/SCN.2/1992/CRP.5/Rev.2 which is reproduced in volume 4.

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Annex

RECOMMENDATIONS REGARDING CONTINUED WORK ON ASSUMPTIONS

Draft final report of the Chairman's Advisory Group on Assumptions

1. The Chairman's Advisory Group on Assumptions was established by Special Commission 2 in August 1986. The initial Group was formed by the delegations of Australia, Brazil, China, India, Kenya, Uganda, the Union of Soviet Socialist Republics, and of the European Economic Community (EEC). Later, the Group was expanded with the addition of experts from the delegations of Cuba, Madagascar, Zambia, the German Democratic Republic, Cameroon, Canada, Colombia, Thailand and the Republic of Korea (listed in the order of joining the Group).

2. The mandate of the Group was to monitor the economic conditions for deep seabed mining in order to be able to advise the Special Commission on when it might be possible to revise the current model of seabed mining, contained in the Australian study LOS/PCN/SCN.2/WP.10 and Add.1. The study examined the potential viability of a fully integrated independent Enterprise operation with a mining capacity of 3 million dry tonnes of polymetallic nodules per year, by comparing it with the same scale of operation of a hypothetical Australian company. The general conclusion of the study was that at the current metal prices, the mining of polymetallic nodules for cobalt, copper, nickel and manganese from the deep seabed was not a viable proposition, either for an Australian company or for the Enterprise. It was stated that to make a mining venture viable it would require the aggregate metal prices to double at their current level. The technology of mining nodules from the deep seabed had not yet been proved. For that reason, the venture had to be considered high-risk and, therefore, a high discounted cash flow rate of return (18 per cent or greater) would be necessary in order to attract investment capital.

3. The Group was also asked, inter alia, to explore the possibility of introducing into the model new assumptions regarding size of production, number of metals extracted, processing sector and capital and operational costs, without prejudice to the most basic assumption of all, that the Enterprise would not mine until it was economically feasible for it to do so.

4. Since market and price factors were expected to play a key role in establishing the economic viability of deep seabed mining, the Group initially decided that it would examine mainly new developments in metal markets and current movements of metal prices in respect of nickel, copper, cobalt and manganese, and review the short-, medium- and long-term forecasts for the production, consumption and prices of the four metals.

5. The Group relied for that work primarily on the relevant information and statistics supplied to it by the experts themselves (principally by the representatives of Australia and EEC) and the Secretariat. The main source of information on the market prices and forecasts for nickel and copper, which was chosen by the Group as a reliable one, were the World Bank's reviews and reports. The Group also had at its disposal useful United Nations documents, in

particular, biennial reports of the Secretary-General on trends and salient issues in mineral resources, and some other documents and reports from different sources. Furthermore, the Group had an important meeting with the World Bank representative, who explained their approach to forecasting and answered numerous questions concerning the Group.

6. On the basis of the information available to it, the Group reported to the Special Commission at each session the results of its considerations regarding the current situation with seabed metal markets and prices and their forecasts, which could be found in the reports of the Special Commission to the Plenary.

7. During its meetings in March 1988, the Group decided to start collecting data and information on the current status and development of seabed mining technology. In this connection, the Group expressed its appreciation of a paper by the Secretariat entitled "Current status of deep seabed exploration and mining by technology" (LOS/PCN/L.56), which contributed greatly to consideration by the Group of the feasibility of seabed mining.

8. In 1988 the Australian Bureau of Mineral Resources (BMR) submitted updated price statistics for the deep seabed mining model used for LOS/PCN/SCN.2/WP.10. BMR again came to the same conclusion that given the present and projected metal price outlook, deep seabed mining for polymetallic nodules was unlikely to be undertaken on a commercial, economically viable basis in the foreseeable future. Sustained major increases in real prices of any of seabed metals over the next decade appeared highly unlikely. The economics of seabed mining, therefore, would probably need to be improved by means of cost reductions achieved through advances in marine mining technology.

9. At the resumed sixth session (August 1988), the Group concluded that it had accumulated substantial knowledge of metal market behaviour and future market trends and would only continue monitoring further movements in that essential area for seabed mining viability.

10. Therefore, at the following session, in March 1989, the Group did not focus exclusively on metal prices and forecasts and their implications for seabed mining viability, but turned to the question of preparing a new list of assumptions that could be agreed to by the Special Commission and would, then, justify revision of the current model contained in the Australian study. In that connection, the expert from Australia confirmed that his country would be prepared to revise its study contained in LOS/PCN/SCN.2/WP.10 for the Preparatory Commission as and when Special Commission 2 agreed on a new set of assumptions formulated by the Group.

11. There was general agreement that the United States Bureau of Mines mine simulation (MINSIM) programme used in that study seemed to be satisfactory so that the model itself did not need to be changed in that respect. Under that understanding and in keeping with its main assumption that seabed mining would prove to be viable when metal prices improved and/or when capital and operating costs could be reduced with the introduction of highly efficient technologies, the Group then decided to examine all the economic and technical factors and parameters which were relevant to seabed mining viability.

12. Examining thoroughly the set of assumptions used in the Australian study, the Group questioned whether another set of assumptions would produce a different result in the rate of return. In attempting to prepare a new list of assumptions for revision of the current model, the Group scrutinized the various factors affecting capital costs, including, inter alia, particularly size of the project production and types of processing technologies in terms of whether three of four metals could be recovered and at what rate, with particular attention to manganese. The factors which affected operating costs were studied as well.

13. Accordingly, a paper entitled "Manganese nodule industrial venture would be profitable: Summary of a four-year study in France" attracted a great deal of attention of the Group. That paper was submitted at the 21st Annual Offshore Technology Conference (OTC), held in May 1989. The OTC paper summarized the results of a four-year programme devoted to the technical and economic study of a nodule exploitation project, undertaken by GEMONOD, a French public interest group, including scientists and engineers from IFREMER (Institut français de recherche pour l'exploitation de la mer), C.E.A. (Commissariat à l'Energie Atomique) and Technicatome. The detailed description of the contents of that paper, made by the Group, could be found in LOS/PCN/L.80.

14. Although the new paper did not present enough details to permit a thorough comparison with the Australian study, the Group believed that it contained many interesting and important features. Firstly, the paper concluded that a French project with an annual production capacity of 1.5 million tonnes would be more profitable. Secondly, it was noted that whereas the add-on manganese plant in the Australian study had a negative effect on the profitability of the whole project, in the French study, manganese contributed substantially to the project's profitability. In addition, the French study obtained slightly higher prices for the metals mined and processed.

15. Recognizing that fuller details of the French study were needed for substantive comparison with respect to the Australian study, the Group decided to contact the GEMONOD Group in order to obtain further details and asked an expert from Australia to prepare a preliminary comparison of some basic assumptions of both studies. As a result, at the ninth session, in August 1991, the Group had before it a paper submitted by the delegation of Australia which compared some of the main parameters of the Australian study with those extracted from the comparative study done by French experts of IFREMER under contract to the Commission of the European Communities, which was prepared on the basis of the above-mentioned French study. For the purpose of a more accurate comparison, both sets of figures related to discounted cash flow rate of return (DCFROR) were derived using the same MINSIM computer programme.

16. After examination of that comparison the Group concluded, inter alia, that a project with an annual production capacity of 1.5 million tonnes of dry nodules might be economically attractive. DCFROR obtained for it was estimated to be about 10 per cent after taxes and payment to the International Seabed Authority. The primary reason for the positive DCFROR was the higher recovery of manganese, using pyrometallurgical processing. The Group noted that in order to arrive at a new set of basic assumptions it was necessary to continue to

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examine new developments related to the technical and economic studies on the viability of deep seabed mining.

17. In discussing the scope and substance of its draft final report in March 1992, the Group was of the opinion that the summary and comparison of the main results of the two studies could be of great importance for the Special Commission and should be added to the report of the Group. At the current session, the delegation of Australia, following consultations with IFREMER and the Commission of the European Communities, has submitted for that purpose a slightly expanded and revised version of the comparison of Australian and French studies on the economic viability of deep seabed mining of polymetallic nodules, which concluded that at the moment neither the French nor the Australian study foresee a means of achieving a DCFROR of over 20 per cent, which would be necessary for a high-risk deep seabed mining operation. However, future developments of the technology could lead to a reduction of this high DCFROR requirement. This comparison has been added to the present report as an integral part of it.

18. In conclusion, the Group was of the view that there was need for continuity in its work, suggesting that its successors, during the period before the entry into force of the Convention, should concentrate, inter alia, on periodic analysis of world markets and metal prices, their trends and forecasts; collection of information on and evaluation of technological developments; and assessment of the state of knowledge of deep sea environments and possible impacts of mining activities. In this connection the Group believed that the Secretariat could take up these activities for the time being.

19. The Australian delegation advised that an updated version of its study on the economic viability of deep seabed mining (LOS/PCN/SCN.2/WP.10) incorporating escalated dollar values would be available before the end of the year.

20. The Group placed on record its appreciation to the experts from Australia and the European Economic Community and to the Secretary of the Group for their substantial input to its work.

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Chapter IV

DRAFT PROVISIONAL REPORT OF SPECIAL COMMISSION 3*

A. Overview of the work of Special Commission 3

250. The object of the present draft provisional report is to provide an overview of the work of the Special Commission in discharging its mandate and to assist delegations in focusing their attention on areas where further work might be desirable.

251. Special Commission 3 was charged with the mandate to prepare rules, regulations and procedures for the exploration and exploitation of polymetallic nodules in the Area, i.e., the seabed mining code.

252. Special Commission 3 commenced its work (under the chairmanship of Mr. Hans Sondaal of the Netherlands) by identifying the issues contained in annex III, article 17, which require rules, regulations and procedures. These issues are: administrative procedures relating to prospecting, exploration and exploitation in the Area; the size of areas (mine sites); duration of operations; performance requirements including assurances, pursuant to article 4, paragraph 6 (c), of annex III of the Convention; categories of resources; renunciation of areas; progress reports; submission of data; inspection and supervision of operations; prevention of interference with other activities in the marine environment; transfer of rights and obligations by a contractor; procedures for transfer of technology to developing States in accordance with article 144 of the Convention and for their full participation in activities in the Area; mining standards and practices, including those relating to operational safety; conservation of marine resources and protection of the marine environment; definition of commercial production; qualification standards for applicants; establishment of uniform and non-discriminatory costing and accounting rules and the method of selection of auditors; apportionment of proceeds from mining operations; the incentives referred to in article 13 of annex III of the Convention; implementation of decisions taken pursuant to article 151, paragraph 10, and article 164, paragraph 2 (d), of the Convention. Though the list of issues provided for in annex III, article 17, is extensive, it is not exhaustive. There are matters relating to the conduct of activities in the Area which are not included in that article, such as:

(a) Protection of human life (art. 146);

(b) Erection, emplacement and removal of installations used for carrying out activities in the Area (art. 147, para. 2);

(c) Prescription of period other than five years for issuance of production authorizations (art. 151, para. 2 (a));

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* This chapter is a revised version of the report which originally appeared in document LOS/PCN/SCN.3/1992/CRP.17.

(d) Implementation of paragraph 7 of article 151;

(e) Criteria and procedures for the implementation of the sponsorship requirements (annex III, art. 4, para. 3);

(f) Objective and non-discriminatory standards for the purpose of selection among applicants for production authorizations (annex III, art. 7, para. 2);

(g) Financial matters other than those referred to in annex III, article 17, e.g., annex III, article 13.

253. To facilitate its consideration of these issues, Special Commission 3 requested the Secretariat to prepare draft working papers on which the discussions in the Special Commission would be based.

254. In 1984, the Secretariat prepared a series of working papers:

(a) LOS/PCN/SCN.3/WP.1 - Seabed Mining Code (Background paper);

(b) LOS/PCN/SCN.3/WP.2 - Draft Regulations on Prospecting, Exploration and Exploitation - application for approval of plans of work (Background paper);

(c) LOS/PCN/SCN.3/WP.2/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - (application for approval of plans of work);

(d) LOS/PCN/SCN.3/WP.3 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background paper);

(e) LOS/PCN/SCN.3/WP.3/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - content of application;

(f) LOS/PCN/SCN.3/WP.4 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background paper);

(g) LOS/PCN/SCN.3/WP.5 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - payment of fee (Background paper).

255. After the discussion of the working papers listed in the paragraph above, and in order to provide a focus and a tool for further deliberations, the Special Commission requested the Secretariat to prepare a comprehensive document incorporating the contents of the above-mentioned papers in the form of draft regulations. That document was issued in 1985 as LOS/PCN/SCN.3/WP.6 (Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area) and was accepted by the Special Commission as the basis for discussion.

256. The Special Commission later requested the Secretariat to prepare a series of addenda to document LOS/PCN/SCN.3/WP.6 in order to complete the set of working papers required to discharge its mandate. The following is a brief description of the contents of the working papers contained in document

LOS/PCN/SCN.3/WP.6 and its addenda and of the discussions conducted in Special Commission 3. (The complete texts of the working papers are found in the annexes to the present report.)

B. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (LOS/PCN/SCN.3/WP.6)

257. This document was discussed at 31 formal and informal meetings of Special Commission 3 in 1985 and 1986.

258. In the discussion of the document, differing views were expressed as to whether the application for designation of an area for the Authority and approval of a plan of work should occur in one stage, or whether the application would be composed of two stages: submission and approval of a plan of work. The central issue was the degree of detail to be included in the plan of work in the one-stage process, where the plan would have to cover both the applicant's mine site and that ultimately designated for the Authority, and the time of approval of the plan of work. The costs of preparing a detailed plan of work for the Authority site would have to be borne by the applicant in the one-stage process.

259. The reasons for supporting the one-stage approach were that: (a) the Convention did not provide for a two-stage procedure; (b) the Authority should not be placed at a disadvantage in obtaining knowledge of the particulars of the area for which an application was submitted; (c) since the Authority was responsible for the selection of the reserved area, it was necessary for the Authority to have access to as much information as possible to enable it to make an informed decision on its selection; (d) in the absence of a plan of work for each of the two areas (one for the applicant, one reserved for the Authority), the Authority would have to rely solely on geological data, which would not be sufficient for an accurate assessment of the equal commercial value of both areas. It was also stressed that the one-stage approach would simplify administrative procedures.

260. On the other hand, the reasons for supporting the two-stage approach were that: (a) it had a legal basis in the Convention; (b) an applicant was not obliged to draw up a plan of work for the Enterprise since the Enterprise was an independent body; (c) it was not practical to draw up two plans of work since this would be costly and the plan of work for the Enterprise would probably be out of date by the time the Enterprise went into commercial production; (d) since the designation of areas would be done by random selection, it would obviate the need for submission of any data and would be the best guarantee for selecting two areas of equally estimated commercial value.

261. In the discussion a reference was also made to the relationship between transfer of technology and the plan of work, the need to incorporate indications of training programmes which were mainly linked to operations in the plan of work and financial terms of the contract relating to the application fee. Mention was also made of the issue of proprietary information, and the view was

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expressed that it should not be used to avoid giving the Authority the information it would need.

262. In June 1988 the Chairman of Special Commission 3 (Mr. Jaap Walkate of the Netherlands), after revising document LOS/PCN/SCN.3/WP.6, taking into account the views expressed issued document LOS/PCN/SCN.3/WP.6/Rev.1 as a basis for further discussion. In order to resolve the "one stage/two stage" question, the Chairman proposed that the application should be submitted in two parts, the first part containing data and information to be submitted by the applicant before the designation of the area and the second part containing data and information to be submitted by the applicant before the final approval of the plan of work.

263. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6 see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.16, LOS/PCN/L.26 and LOS/PCN/L.32. The issues contained in LOS/PCN/SCN.3/WP.6/Rev.1 were taken into account in the preparation of addenda to LOS/PCN/SCN.3/WP.6.

C. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Procedures for Application, Approval and Issuance of Production Authorizations (LOS/PCN/SCN.3/WP.6/Add.1)

264. The document was discussed during nine meetings of the Special Commission in 1989 and 1990.

265. Some of the views supported the production limitation formula, since it was felt that it would help integrate and stabilize mineral markets when seabed mining was in production. While stating concern for a stable market for the metals produced from deep seabed mining, some delegations were of the opinion that the formula was an adequate means for assuring favourable introduction of metals into the market. This opinion held that the inflexibility of the free market aspects of the deep seabed mining industry, as well as the inertia inherent in the long lead-in time for deep seabed mining projects, was far more important than any perceived inflexibility of the trend line in the production limitation formula. Concern was expressed about the effects of unrestricted or subsidized seabed mining operations on producers and consumers alike. At the same time the Special Commission was informed that the issue of "subsidized production" was being addressed in the negotiations being conducted by the General Agreement on Tariffs and Trade (GATT) and that the results should eventually enable the specific question of deep seabed mining subsidies to be settled.

266. Other views characterized the production limitation formula as an artificial restraint both on the commencement of seabed mining and on production levels. It was emphasized that the formula itself was one of the serious obstacles to universal acceptance of the Convention. In addition, it was stated, inter alia, that: (a) the limitation of deep seabed mining would not benefit consumer countries; (b) seabed mining would take place gradually in response to increased demand and substantially higher metal prices and,

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therefore, not destabilize the market; and (c) mining companies would not want to destabilize the market since that would have a direct effect on the economic viability of their deep seabed mining projects.

267. After detailed consideration of LOS/PCN/SCN.3/WP.6/Add.1 within the Special Commission, it was apparent at the time that a consensus had not emerged as to the suitability of the text as a basis for negotiation. For this reason a revision of the document was not prepared.

268. For further details on the issues of substance addressed during consideration of LOS/PCN/SCN.3/WP.6/Add.1, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.74 and LOS/PCN/L.79.

D. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract

(LOS/PCN/SCN.3/WP.6/Add.2)

269. The document was discussed at 30 meetings of Special Commission 3 in 1986-1988 and one of the main concerns expressed in the discussions regarded the current system of taxation, as prescribed in the Convention. Some of the issues raised in that context were whether the required payments imposed too heavy a burden on seabed miners and whether the choice of the system of payment which might involve an annual fixed fee, a production charge or a combination of a production charge and a share of net proceeds was too complicated.

270. In the course of discussions varying views were expressed. On the one hand it was felt that: changed economic and market circumstances called for a review of the system of payment and the rates of taxation; the front-end payments that were to be incurred before mining income was generated were onerous; and it was preferable to establish two levels of annual fixed fees - one for exploration only and the other for exploration and exploitation.

271. On the other hand, it was stated that: before mining income was generated, a reasonable payment should be made once prospective deep seabed miners had secured exclusive mining areas and had obtained exploration rights; lower rates of taxation of the mining income would not only reduce the revenues of the Authority, but also could give rise to the possibility that deep seabed miners would have a competitive advantage in comparison with land-based miners through a more lenient tax system; and mining States would diminish the revenue benefits for the Authority by seeking a reduction in tax revenues to it while imposing their own national taxes on operators.

272. Other issues raised in the discussions were that some of the complicated accounting and bureaucratic tasks involved in determining the tax base and the tax payments under the existing system might be too burdensome and expensive for both the Authority and the operator. It was also felt that it would be difficult at the time to attempt to develop a detailed set of rules for the purpose of taxation since the seabed mining industry had not yet been developed. It was suggested therefore that it would be more appropriate to establish

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certain principles on the basis of which detailed rules and regulations might be elaborated when deep seabed production was imminent.

273. Document LOS/PCN/SCN.3/WP.6/Add.2 was revised by the Chairman taking into account views expressed and was issued as document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1 on 25 May 1989 as a basis for further discussion.

274. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.2, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.38, LOS/PCN/L.52 and LOS/PCN/L.59.

E. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract (Draft Regulations on Financial Incentives) (LOS/PCN/SCN.3/WP.6/Add.3)

275. The document was discussed at two meetings of Special Commission 3 in 1987. Differing views were expressed as to whether incentives should be an integral component of the financial rules or whether they should be provided solely at the discretion of the Authority and only in exceptional circumstances.

276. The reason for favouring the incentives as an integral part of the financial rules was that the rules would then contain a clear mechanism and an institutional framework based on stable criteria and non-discriminatory procedures under which uniform and predetermined incentives would be provided automatically in compliance with conditions detailed in advance.

277. The other point of view was that the provision of financial incentives should not be viewed as creating an exception to the financial terms of contract. The availability of incentives should not be automatic but should only be awarded on an ad hoc, case-by-case basis at the discretion of the Authority. It was also suggested that the provision of such incentives should not amount to subsidizing seabed mining, especially to the detriment of land-based mining.

278. Since the discussion concentrated mostly on procedural rather than substantive issues, the Chairman decided not to revise the original draft but to include it as part B in document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1, which contained the revised draft financial terms of contract.

279. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.3, see the statements to the plenary by the Chairman of Special Commission 3 contained in document LOS/PCN/L.52.

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F. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Draft Regulations on the Transfer of Technology until Ten Years after Commencement of Commercial Production by the Enterprise)

(LOS/PCN/SCN.3/WP.6/Add.4)

280. The document was discussed at 28 meetings of Special Commission 3 in 1988 and 1989 and set out, inter alia, procedures for the Enterprise to follow if it failed to obtain deep seabed mining technology on the open market at fair and reasonable commercial terms and conditions.

281. The working paper attempted to strike a balance between the obligation of the Enterprise to undertake adequate efforts to procure technology on its own, and the obligation of the contractor to assist it and, if required, to negotiate acceptable terms for its sale if the Enterprise failed to obtain such technology.

282. Differing views were expressed in the discussion.

283. According to one view, the seabed mining technology to be transferred to the Enterprise should cover processing technology as well. It was also felt that "essential national security reasons", referred to in article 302 of the Convention, should not constitute a loophole for States seeking to avoid technology transfer obligations. If the technology could not be transferred for security reasons, it could not be utilized by the operator in the international seabed area, since that would be disadvantageous to the Enterprise. It was further suggested that procedures requiring that the organs of the Authority review their decision to invoke a contractor's undertaking to transfer technology could cause unnecessary delays and obstruct the implementation of transfer obligations.

284. According to the other view, the provisions for the compulsory transfer of technology were a disincentive to investment and technology development, and the Convention did not envisage the transfer of processing technology. It was pointed out that, in regard to seabed mining technology, the Enterprise should adhere to regular commercial practices since adequate technology would be available on the open market. The Enterprise would be assisted by contractors who would provide general descriptions of equipment and methods of such technology and information as to where similar technology might be obtained. It was also suggested that joint ventures would provide the most effective means for the transfer of technology, which would be subject to conditions to be agreed among the parties concerned.

285. Another view expressed was that there was doubt whether the Convention required the obligatory transfer of technology to developing States if they were a partner in a joint venture with the Enterprise. It was felt that in that case the obligation to transfer would be limited only to the Enterprise and not to the other partner. Consequently, it was stated, there appeared to be a contradiction between these provisions and those of annex III, article 5. On the other hand, it was pointed out that there was no such contradiction, since

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those provisions related to different aspects and therefore both the Enterprise and developing States would be eligible for the transfer of technology.

286. A further view was expressed that there was a need for an article on training, to be included in any provisions dealing with the transfer of technology, since that was part of the obligation of the contractor and was consistent with the requirements that the contractor would have to fulfil in respect to his plan of work.

287. The working paper of the Secretariat, LOS/PCN/SCN.3/WP.6/Add.4, was revised by the Chairman and was issued as document LOS/PCN/SCN.3/WP.6/Add.4/Rev.1 on 9 August 1990 as a basis for further discussion.

288. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.4, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.59, LOS/PCN/L.64 and LOS/PCN/L.69.

G. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Protection and Preservation of the Marine Environment from Activities in the Area) (LOS/PCN/SCN.3/WP.6/Add.5

289. The document was discussed at 25 meetings of the Special Commission in 1990 and 1991. In the course of the discussions it became clear that all States wished to ensure the protection and preservation of the marine environment. However, it was also felt that very little was known at the time regarding the environmental consequences of deep seabed mining and that significantly more long-term and substantial research would have to be conducted to enable informed decisions to be made at the appropriate time.

290. The working paper had been prepared by the Secretariat taking into account the mandate of the Authority to adopt appropriate rules, regulations and procedures to prevent, reduce and control pollution of the marine environment arising from exploration for, and exploitation of the resources of the Area. The draft regulations drew upon a number of sources: first, the relevant articles of the Convention, particularly the provisions to be found in Parts XI and XII; secondly, the legislation and regulations of States concerned with deep seabed mining; and thirdly, other multilateral conventions, such as that relating to Antarctic mineral resources.

291. The most difficult aspect of the working paper had been to ensure that there was a fair balance between the need to preserve and protect the marine environment and the development of the resources of the international seabed area; and that the regulations sought to define the meaning of "serious harm to the marine environment" by excluding certain effects on the marine environment arising from activities in the Area assessed or judged to be acceptable by the Authority according to the relevant rules and regulations. In so doing, the draft regulations ensured that deep seabed mining would not be unreasonably restricted.

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292. In order to assess the effect of each contractor's activities in the Area, the draft regulations provided for the establishment of environmental reference zones. They expressly provided for the submission of an environmental report or an environmental impact statement, based on the relevant data collected during the prospecting stage, that had to be submitted to the Legal and Technical Commission before the approval of any plan of work for exploration. At the exploitation phase, before the Legal and Technical Commission recommended the approval of a plan of work for exploitation, each applicant would be required to submit an environmental impact statement, which would contain more detailed requirements.

293. In order to assist the Authority in monitoring the contractor's compliance with the terms and conditions of the contract and with the rules and regulations relating to the protection and preservation of the marine environment arising from activities in the Area, contractors would be required to submit an annual report on the effects of their activities in the Area on the marine environment. The regulations established a system of inspection enabling the Authority to send its inspectors on board vessels and installations used by the contractor in a form of cooperation by the Authority and by the Sponsoring State or States. The provisions also provide for procedures for the emergency suspension or adjustment of operations.

294. The provisions on the liability of contractors for serious harm to the marine environment were of crucial importance for deep seabed mining, where harm might occur beyond national jurisdiction and where harm which is likely to occur is harm to the marine environment itself rather than to a person or property.

295. Views of a general nature were expressed, one of which was the need to conduct further environmental studies of the marine environment in the Area. Safe methods of exploitation could be established only on the basis of appropriate comprehensive experimental data and information on any effects of exploitation of polymetallic nodules on the living or non-living components of the marine environment and associated ecosystems. Effective monitoring of the Area was needed. In this regard, the view was expressed that since the start-up of deep seabed mining would be delayed, this would provide ample time for careful research aimed at protecting the marine environment. Some views stressed the potentially serious problems that could be posed by deep seabed mining. It was held that since deep seabed mining might not occur for many years to come, the Preparatory Commission should map out a strategy for preserving the seabed environment and not merely establish a set of formal procedures. This view also called for the mobilization of public opinion and governmental awareness and suggested that an ad hoc group of experts be set up to make recommendations in that connection.

296. There was general support for convening a seminar on the environmental impact of deep seabed mining and the means for assessing it. It was felt that the seminar would enhance the Special Commission's knowledge to enable it to draft these regulations. A number of delegations with technical data and expertise in the subject-matter, including some registered pioneer investors, stated their willingness to cooperate in the exchange of data and make some of their experts available for the seminar.

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297. Four meetings of the Special Commission were devoted to the seminar on the environmental aspects of deep seabed mining. Experts from the Federal Republic of Germany, France, Norway, Sweden, the Union of Soviet Socialist Republics, the United States of America, Japan and India participated in the Seminar in their personal capacities as guest speakers. Among the issues addressed by the seminar were: environmental aspects of deep seabed mining; characteristics of the deep seabed environment; chemical analysis in assessing the environmental impact of seabed mining; the relationship between manganese nodule formation and the sedimentary processes in the Clarion-Clipperton area and its importance for environmental studies on deep seabed mining in one test area; the impact of deep seabed activities over time and space; field and computer simulation for predicting the impact of seabed mining on the ocean environment; characterization of manganese nodule processing waste; the current state of seabed mining and environmental research in Japan; the Deep Ocean Mining and Environmental Study (DOMES); relevant research conducted at the Scripps Institution of Oceanography; the need for large-scale experiments and monitoring; the status of seabed mining in India; the role of environmental reference zones; optimization of international reference areas and the application of the "precautionary principle" in assessing the impact of seabed mining.

298. The working paper was revised by the Chairman following several sessions of informal consultations and was issued under a new title, "Protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area", in document LOS/PCN/SCN.3/WP.6.Add.5/Rev.1 on 27 August 1991 as a basis for further discussion.

299. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.5, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.79, LOS/PCN/L.84 and LOS/PCN/L.89.

H. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accommodation of Activities in the Area and in the Marine Environment) (LOS/PCN/SCN.3/WP.6/Add.6)

300. The document was discussed during five meetings of Special Commission 3 in 1991. There was a convergence of views that all activities should be accommodated in the Area and in zones outside national jurisdiction as long as those activities did not interfere with one another. It was felt also that while it was important to promote the principle of "reasonable regard", some priorities might have to be determined, and that the role of competent international organizations should be more clearly defined.

301. All these issues were addressed in informal consultations conducted by the Chairman, which enabled him to revise the working paper and to issue it as document LOS/PCN/SCN.3/WP.6/Add.6/Rev.1 on 28 June 1991.

302. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.6, see the statements to the plenary by the Chairman of Special Commission 3 contained in document LOS/PCN/L.89.

I. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accounting Principles and Procedure) (LOS/PCN/SCN.3/WP.6/Add.7)

303. The document was discussed at 15 meetings of the Special Commission in 1991 and 1992. Two main views evolved from the discussion: on one hand, it was felt that complicated accounting principles and procedures were not required, especially if the contractor selected the production charge system of paying revenues to the Authority. It was pointed out that once the quantities of polymetallic nodules recovered and the amounts of processed metals produced by the contractor were known, the production charge system would be simple enough to avoid the need for a detailed examination of the contractor's accounting records.

304. The other view was that, while there were practical distinctions between payment options, those distinctions should not be seen as exempting some of the contractors from complying with accounting principles and procedures applicable to others. Furthermore, the Authority should retain the right to examine the contractor's accounting records since they would have to contain information and data other than the system of payment, e.g., development costs and other costs borne by the contractor.

305. It was also felt that, even if the choice was made to pay only the production charge, it would not be sufficient to create a situation where the Authority would not be empowered to verify how the contractor determined the production charge he would be required to pay. It was further argued that the Authority, in order to dispel any doubts on how the production charge was determined, should have access to all information going beyond the quantity of nodules and the average market price of processed metals.

306. After detailed consideration of the working paper, an informal compromise proposal relating to the calculation of the production charge was suggested. It provided for an arrangement between the contractor and the Authority immediately prior to commencement of commercial exploitation by which certain parameters relating to the quantities of processed metals to be produced in a given period and financial arrangements would be agreed upon. It was suggested that this would be a kind of confidence-building measure which would reduce the likelihood of the Authority needing to resort to a safeguard clause entailing an examination of the contractor's books.

307. Initially it appeared that the above informal proposal might command a consensus among the delegations participating in the informal consultations. It was also the view of several delegations that certain procedures of an accounting nature should apply on a uniform basis to all contractors, and not only on an exceptional basis, as would be the case in the proposed "safeguard clause". It was stressed in this context that the Authority and the contractor

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must know, from the onset of their contractual relationship, what information would be required to settle any dispute, including information of a financial and accounting nature to be submitted by the contractor in close consultation with the Authority. However, after some discussion certain reservations were still maintained, especially with respect to the need for a "safeguard clause" which the Authority could invoke in situations where any discrepancies existed between the accounting of the contractor and that of the Authority. At that point it was felt that further discussions within the informal consultations or formal meetings of the Special Commission on the subject would not achieve a positive result.

308. Following lengthy discussions at both the formal and informal level within the Special Commission, it became apparent that a consensus which could provide a basis for an integrated revised text had not emerged. For this reason a revision of the document has not been prepared.

309. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.7, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.94 and LOS/PCN/L.99.

J. Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Labour, Health and Safety Standards) (LOS/PCN/SCN.3/WP.6/Add.8)

310. The document was discussed at six meetings of the Special Commission during the spring session of 1992.

311. The view was expressed that existing conventions adopted under the auspices of the International Maritime Organization (IMO) and the International Labour Organization (ILO), as well as national legislation on health and safety standards, were adequate to cover activities in the Area and therefore it was not necessary to duplicate the provisions of those conventions in the seabed mining code.

312. On the other hand, it was stated that although existing conventions were relevant, seabed mining would be a unique activity requiring new standards since current ones would not be appropriate in all cases.

313. A further view was expressed that the key issue to be resolved was to what extent existing national and international norms were related to activities in the Area. It was suggested that all human activities in the Area would take place on board vessels which would be under the jurisdiction of States, i.e., the Flag State. Therefore, any norms would be applicable only to those vessels and not to the deep seabed itself. The view was also expressed that there was a degree of competence of the Authority in regard to health and safety standards as provided for in the Convention. Since the mining code would be a self-contained instrument without prejudice to existing criteria and since there was a difference between activities conducted outside the Area, which were not subject to the supervision of the Authority, and those conducted inside the

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Area, which would be subject to such supervision, this distinction should be explicitly stated.

314. All these issues were addressed in informal consultations conducted by the Chairman. Consensus was reached on a revised text, which was issued as document LOS/PCN/SCN.3/WP.6/Add.8/Rev.1 on 15 January 1993.

315. For further details on the issues of substance addressed during the consideration of LOS/PCN/SCN.3/WP.6/Add.8, see the statements to the plenary by the Chairman of Special Commission 3 contained in documents LOS/PCN/L.99 and LOS/PCN/L.106.

K. Conclusion

316. By the end of the tenth session of the Preparatory Commission, Special Commission 3 had completed the first reading of the draft mining code on the basis of the working papers prepared by the Secretariat. Some working papers had been revised by the Chairmen taking into account the proposals and positions put forward by different delegations. Although some issues remain to be resolved, a number of the provisions of the draft mining code have in effect met with the approval of delegations. This report appraises the progress made to date in Special Commission 3 in the consideration of the various documents comprising the draft mining code. It also intends to shed light on the issues that require further consideration.

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Chapter V

PROVISIONAL REPORT OF SPECIAL COMMISSION 4*

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

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* This chapter is a revised version of the report which originally appeared in document LOS/PCN/SCN.4/WP.15. It also appears in document LOS/PCN/SCN.4/WP.16.

Introductory note

317. Pursuant to resolution I, the Preparatory Commission shall remain in existence until the conclusion of the first session of the Assembly of the Authority. The Preparatory Commission decided on the matters to be dealt with by the Plenary and the Special Commissions as allocated,* and Special Commission 4 was allocated the preparation of recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.** Having delegated this function to Special Commission 4, the Preparatory Commission reserved to the Plenary the presentation of its report through its Chairman on the arrangements for the establishment of the International Tribunal for the Law of the Sea to the Meeting of States Parties convened for the purpose.*** Consequently, and as decided by Special Commission 4, the present report is provisional. It is the product of the deliberations and decisions of Special Commission 4 in carrying out its mandate. It reflects the results achieved so far and makes reference to issues which remain pending. While reflecting the results, the report should in no way be interpreted as precluding the further consideration of the pending issues.

318. The present provisional report and the addenda, upon their review and approval, will constitute the Report of the Preparatory Commission under paragraph 10 of resolution I of the Third United Nations Conference on the Law of the Sea, to be presented to the Meeting of States Parties. The component reports and final working papers which reflect the results of the work of Special Commission 4, whether formulated by it or at its request, listed as addenda would be an integral part thereof.

319. Following the issuance of the draft outline for the report (LOS/PCN/SCN.4/WP.14), the Preparatory Commission at its tenth session summer meeting in New York invited participating States to submit their comments on the draft provisional reports of the four Special Commissions and the informal Plenary. The draft report presented as LOS/PCN/SCN.4/WP.15 was formulated pursuant to that decision and took into account the comments received with respect to LOS/PCN/SCN.4/WP.14. The present provisional report of Special Commission 4 takes account of the deliberations and decisions of the Special Commission at the eleventh session on the basis of the draft report (LOS/PCN/SCN.4/WP.15). In reviewing the draft report, the Special Commission, *inter alia*, noted that some issues were pending.

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* LOS/PCN/3, para. 2.

** LOS/PCN/27, annex I, para. 1 (d).

*** LOS/PCN/27, annex I, sect. II (e).

320. Pending issues on which no agreement was reached are:

(a) Whether there should be one or two or six official working languages of the Tribunal, and consequently what treatment would be accorded to the other languages;

(b) How the scheme for phasing in the Tribunal should be applied.

321. As regards the question of languages, the resolution of the issue would require consequential review and determination regarding the Final Draft Rules of the International Tribunal for the Law of the Sea (Addendum 1); the final working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (Addendum 6); and the report with proposals concerning the initial financing and budget of the International Tribunal for the Law of the Sea (Addendum 7). Similarly, the manner of application of a scheme for phasing in of the Tribunal would require consequential review and determinations regarding the Final Draft Rules of the Tribunal (Addendum 1); and the report with proposals concerning the initial financing and budget of the International Tribunal for the Law of the Sea (Addendum 7).

322. A separate list of attachments in the present provisional report identifies the relevant core documentation of the Special Commission and of the Preparatory Commission which are considered essential to providing a faithful record of the work of the Special Commission, its deliberations and its conclusions and decisions which led to the preparation and presentation of the draft report.

323. When the Plenary, at the eleventh session, took up the draft report on the arrangements for the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.15) for consideration, it was noted that, as in the case of the draft provisional report of the Plenary (document LOS/PCN/WP.52), there was inadequate time to consider the addenda to the report at the session. Consequently it was decided that delegates would be allowed to transmit their comments on the addenda and that the comments received from delegations would be attached to the reports as annexes thereto.

INTRODUCTION

324. The present report reflects the work of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea in making practical arrangements for the establishment of the International Tribunal for the Law of the Sea. The Tribunal was established by the 1982 United Nations Convention on the Law of the Sea, which contains the Statute of the Tribunal in annex VI thereto. Resolution I adopted with the Convention by the Third United Nations Conference on the Law of the Sea established the Preparatory Commission and mandated it, inter alia, to prepare a report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea for submission to the Meeting of States Parties to be convened in accordance with the Statute of the Tribunal. 22/ The Preparatory Commission established at its first session, besides its Plenary and the General Committee, four Special Commissions. Special Commission 4 was charged with the preparation of the report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea. 23/ The Preparatory Commission elected Dr. Gunter Goerner (German Democratic Republic) as Chairman of Special Commission 4 and he served from the first session in 1983 to the eighth session in 1990. 24/ On 25 February 1991, the Preparatory Commission elected Mr. Anton Bouteiko (Ukraine) to replace him. Colombia, Greece, Philippines and Sudan were elected as Vice-Chairmen of the Special Commission, constituting, with its Chairman, the Bureau.
Dr. Theodore Chalkiopoulos (Greece), Vice-Chairman, acted as Chairman in the absence of the Chairman at the seventh session of the Preparatory Commission held at Kingston, 25/ at the eighth session held in New York 26/ and at the tenth session in Kingston and in New York. 27/

325. The Special Commission adopted its provisional agenda contained in SCN.4/1984/CRP.1 and Rev.1. 28/ Its mandate was initially elaborated in SCN.4/WP.1. When considering its work programme the Commission first decided to take up the items listed in paragraph 3 of SCN.4/WP.1, with the addition of Relationship Agreements as referred to in part II of that working paper. The Commission also expressed the need to prepare rules for the Meeting of States Parties and recommendations for the election of members of the Tribunal. It did not consider it appropriate to prepare a comprehensive list of issues and items for its programme of work since additional items might be considered necessary as work progressed. For each session of the Preparatory Commission, the requirements for the programme of work were further elaborated as necessary and priorities established by the Special Commission on the recommendation of its Bureau and the initiative of its Chairman. The method of work was also established and the Commission dealt with the items under its work programme on that basis.

326. The Special Commission prepared the draft outline for the report of the Preparatory Commission containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (SCN.4/WP.14) which was the basis for its consideration of the recommendations of the Preparatory Commission to the Meeting of States Parties. Taking into account the comments received from participating States on the draft

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outline contained in SCN.4/WP.14, the draft report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea as contained herein was considered by the Special Commission. With the adoption by the Preparatory Commission of the present draft report, the final stage in the establishment of the International Tribunal for the Law of the Sea has been commenced with the preparation for the first Meeting of States Parties to the Convention prior to the inauguration of the Tribunal.

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CHAPTER I. JUDICIAL PROCEDURE

Section 1. Recommendations concerning the draft rules of the Tribunal

For the purpose of preparing for the International Tribunal to perform its judicial functions at the earliest possible time after entry into force of the Convention, it is desirable that the Meeting of States Parties facilitates the adoption of the rules of the Tribunal.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final draft Rules of the Tribunal formulated by the Commission and its Special Commission 4, addendum 1 hereto, should provide the basis for the determination by the Tribunal of its rules of procedure.

The Special Commission first considered the requirements for the procedural rules of the Tribunal and examined the items listed in SCN.4/WP.1. Account was taken of SCN.4/1984/CRP.2-5 in this connection. Thereafter, the draft Rules of the Tribunal (SCN.4/WP.2); and the supplement to the draft Rules of the Tribunal - on the Prompt Release of Vessels and Crews (SCN.4/WP.2/Add.1): working papers prepared by the Secretariat, were examined by the Special Commission, taking into account the table of concurrence of the draft Rules of the Tribunal (SCN.4/WP.3) and the draft texts proposed for specific provisions (SCN.4/1985/CRP.6, SCN.4/1985/CRP.7-10 and 12-14, SCN.4/1986/CRP.15-18) as reflected in the Chairman's summaries of discussions (SCN.4/L.2 and Add.1 and Add.1/Corr.1, L.3 and Add.1, L.4 and Add.1, L.5 and Add.1).

Thereafter the Special Commission considered the revision of the draft Rules of the Tribunal (SCN.4/WP.2/Rev.1, Parts I and II) prepared by the Secretariat, taking into account the draft texts proposed for specific provisions (SCN.4/1986/CRP.20, SCN.4/1987/CRP.22, SCN.4/1988/23 and Rev.1, 25, 28-30, SCN.4/1989/32 and 37), as reflected in the Chairman's summaries of discussions (SCN.4/L.7 and Add.1, L.9/Add.1, L.10 and Add.1 and Add.1/Corr.1). The Special Commission decided (LOS/PCN/L.53, para. 9) that the Secretariat would formulate the Final Draft Rules of the Tribunal, addendum 1 hereto.

Section 2. Composition of the Tribunal and its chambers

In connection with the equitable geographical distribution and the representation of the principal legal systems in the composition of the Tribunal and its chambers, the Special Commission expressed the view that firm and detailed rules should not be established by the Preparatory Commission. The deliberations of the Special Commission in this connection are reflected in chapter VI, section 2, below.

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Section 3. Official working languages

The Special Commission exchanged views on the official languages and those in which its pleadings and judgements would be issued as reflected in the Chairman's summary of discussions (SCN.4/L.14, pp. 10 and 11); Chairman's Statement to the Plenary (LOS/PCN/L.86, paras. 6-8); and proposals submitted by delegations (SCN.4/WP.12 and 13). Chapter IV, section 1, below also deals with this question. No agreement was reached among delegations regarding the official working languages of the Tribunal.

Section 4. Harmonization of jurisprudence

The need to provide a means to achieve harmonization of the jurisprudence of the Tribunal and its chambers was considered. A proposal was made as to how this can be achieved and the deliberations of the Preparatory Commission are reflected in the Chairman's summary of discussions (SCN.4/L.3, paras. 99-100).

Section 5. Internal judicial practice

The draft Rules of the Tribunal recognize the requirement for a resolution to be formulated by the Tribunal on its internal judicial practice in a manner consistent with the practice of the International Court of Justice. The deliberations of the Special Commission in this connection are reflected in the Chairman's summary of discussions (SCN.4/L.7, paras. 27-30).

Section 6. Access by States not parties to the Convention

The terms for access to the Tribunal by States not parties to the Convention would, as necessary, be elaborated by the Tribunal in accordance with annex VI taking into account, where appropriate, the practice of the International Court of Justice regarding the participation of States Parties to the Statute of the Court which are not States Members of the United Nations, as provided in General Assembly resolution 91 (I) of 11 December 1946.

CHAPTER II. INTERNATIONAL AGREEMENTS

Section 1. Recommendations concerning the draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany

For the purpose of preparing for the International Tribunal to function at the seat of the Tribunal in Germany, it is desirable that the Meeting of States Parties facilitates the Tribunal and the host country entering into a headquarters agreement.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, formulated by the Commission and its Special Commission 4, addendum 2 hereto, should provide the basis for negotiating and entering into such an agreement.

The Special Commission first discussed the requirements for a headquarters agreement (SCN.4/WP.1, para. 7). It also discussed the question of privileges, immunities and facilities in relation to the Tribunal and its work. These discussions took into account the items listed in SCN.4/WP.1, paras. 3 and 5 to 7. Account was also taken of SCN.4/WP.4, which identifies issues for consideration, and also SCN.4/1985/CRP.8 and 9. The summary of this review is contained in the Chairman's summary of discussions (SCN.4/L.9). Thereafter, a draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (SCN.4/WP.5, Parts I and II) was prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.47) and deliberated on, as reflected in the Chairman's summary of discussions (SCN.4/L.11 and Add.1).

A revised draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (SCN.4/WP.5/Rev.1 and Corr.1) prepared by the Secretariat, taking into account the deliberations in the Special Commission, the draft texts proposed for specific provisions and the suggestions of a drafting nature, and providing compromise texts on issues where agreement was not reached, was considered and approved by the Special Commission in accordance with its deliberations. 29/

The Special Commission decided that the Secretariat would formulate the final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, addendum 2 hereto, on the basis of the decision of the Special Commission (LOS/PCN/L.101, para 4; SCN.4/1992/CRP.45) and harmonized to the extent possible with the final draft revised Protocol on the Privileges and Immunities of the Tribunal. 30/

Section 2. Recommendations concerning the Draft Protocol on the Privileges and Immunities of the Tribunal

For the purpose of providing the requisite privileges and immunities for the effective functioning of the International Tribunal, it is desirable that the Meeting of States Parties adopts an international protocol that may be adhered to by all States.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea formulated by the Commission and its Special Commission 4, addendum 3 hereto, should provide the basis for negotiating and entering into such a protocol.

The Commission discussed the question of privileges, immunities and facilities in relation to the Tribunal and its work, taking into account the items listed in SCN.4/WP.1, paragraphs 3 and 5 to 7. Account was also taken of SCN.4/WP.4, which identified issues for consideration, and also SCN.4/1985/CRP.8 and 9. The summary of this review is contained in the Chairman's summary of discussions (SCN.4/L.9).

Thereafter, a draft Protocol on the Privileges and Immunities of the International Tribunal (SCN.4/WP.6) was prepared by the Secretariat at the request of the Commission (LOS/PCN/L.53, para. 19 (c)). This working paper was reviewed article by article by the Special Commission, as reflected in the Chairman's summary of discussions (SCN.4/L.13 and Add.1).

Subsequently, a revised draft Protocol on the Privileges and Immunities of the International Tribunal (SCN.4/WP.6/Rev.1 and Corr.1 and 2) prepared by the Secretariat, taking into account the deliberations in the Special Commission, the draft texts proposed for specific provisions (SCN.4/1988/CRP.24, 26 and 27; SCN.4/1989/CRP.31 and 33-35), and the suggestions of a drafting nature, and providing compromise texts on issues where agreement was not reached (LOS/PCN/L.91, para. 10), was considered and formulated by the Special Commission in accordance with its deliberations. 31/

CHAPTER III. RELATIONSHIP ARRANGEMENTS

Section 1. Recommendations concerning relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea

In order to enable the International Tribunal and the United Nations to have and develop a relationship of effective cooperation, thereby facilitating the objectives of the Tribunal and the United Nations, it is desirable that the Meeting of States Parties facilitates the Tribunal and the United Nations entering into a relationship agreement.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea, formulated by the Commission and its Special Commission 4, addendum 4

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> hereto, should provide the basis for negotiating and entering into such an agreement.

The Commission first discussed the issues (SCN.4/WP.1, paras. 8-12). The relevant issues contained in the working paper titled "Issues concerning relationship agreements between the International Tribunal for the Law of the Sea and other international organizations" (SCN.4/WP.7), prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.61, para. 19 (c)), were first discussed, taking into account the issues listed in SCN.4/1989/CRP.36.

The draft relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (SCN.4/WP.9 and Add.1), prepared by the Secretariat pursuant to the request of the Special Commission (LOS/PCN/L.76, para. 12 (b)), was reviewed by the Special Commission, as reflected in the Chairman's summary of discussions (SCN.4/L.15). The final draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea was formulated by the Secretariat, addendum 4 hereto, on the basis of the decision of the Special Commission (LOS/PCN/L.107) with due consideration for the views expressed in the Commission regarding the need for maximum economy in establishing the Tribunal and its functioning while maintaining the highest possible level of efficiency (LOS/PCN/L.86, para. 5).

Section 2. Use of the United Nations laissez-passer by the Tribunal

The use of the United Nations laissez-passer by the Tribunal and its officials was considered by the Special Commission in its deliberations, as reflected in the Chairman's summary of discussions (SCN.4/L.11/Add.1). 32/

Section 3. Relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority

For the purpose of addressing the role of the Tribunal in relation to the activities of the International Seabed Authority, it is desirable that an appropriate relationship arrangement be entered into between them.

Therefore

THE PREPARATORY COMMISSION submits:

> a report on the deliberations and suggestions of the Special Commission concerning the principles governing relationship arrangements between the International Tribunal and the International Seabed Authority, prepared by the Secretariat, addendum 5 hereto.

The Commission first discussed the issues (SCN.4/WP.1, paras. 8-12). The relevant issues contained in the working paper titled "Issues concerning

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relationship agreements between the International Tribunal for the Law of the Sea and other international organizations" (SCN.4/WP.7), prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.61, para. 19 (c)), were first discussed, taking into account the issues listed in SCN.4/1989/CRP.36.

The working paper on principles governing relationship arrangements between the International Tribunal and the International Seabed Authority (SCN.4/WP.10), prepared by the Secretariat was reviewed by the Special Commission. 33/

Section 4. Supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice

Supplementary arrangements between the Tribunal and the International Court of Justice were not formulated by the Special Commission. Consequent upon the communication from the Registrar of the International Court of Justice, the Special Commission decided that it would not be appropriate for it to consider such relationship arrangements.

CHAPTER IV. ADMINISTRATIVE ARRANGEMENTS

Section 1. Recommendations concerning administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea

and

Recommendations concerning the scheme for the initial phasing-in of the establishment of the International Tribunal for the Law of the Sea

The degree to which the Tribunal can fulfil its purposes will be determined by its institutional structure, the effectiveness of its administration, including budgetary and personnel matters, and the efficiency of its services.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the final working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea, prepared by the Secretariat, addendum 6 hereto, should provide the basis for the deliberations and determinations of the Meeting of States Parties.

The working paper titled "Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea" (SCN.4/WP.8), prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.76, para. 12 (a)), was based on the organizational structure of the Tribunal as set out in the Convention and taking into account the structure of existing international tribunals and courts and their experiences based on the use of two working languages, with the pleadings and judgments to be issued in all six working languages of the United Nations after completion of each application, case or advisory opinion. The addendum, "Supplementary cost estimates reflecting alternatives as to one or six official working languages" (SCN.4/WP.8/Add.1 and Corr.1), and the further addendum, "Scheme to phase in the establishment of the International Tribunal for the Law of the Sea" (SCN.4/WP.8/Add.2 and Corr.1), were also prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.76, para. 12 (a)). While no conclusions were reached, the deliberations of the Special Commission were reflected in the Chairman's summary of discussions (SCN.4/L.14 and LOS/PCN/L.81, paras. 5-9). 34/

The Special Commission decided to formulate for the Meeting of States Parties the final draft working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea, addendum 6 hereto, on the basis of the decision of the Special Commission (LOS/PCN/L.91, para. 8), containing relevant elements relating to the scheme for phasing in the establishment of the Tribunal and the alternative schemes concerning the implications of the number of official languages and working languages.

As regards the languages of the Tribunal, the Commission conducted an exchange of views, as reflected in the Chairman's statement to the plenary (LOS/PCN/L.86, paras. 6-8), and informal consultations were conducted among delegations on this question. Subsequently, proposals were submitted by the delegation of Cuba on behalf of the Group of Latin American and Caribbean Countries (SCN.4/WP.12) and by the delegations of Austria, Belgium, Canada, Côte d'Ivoire, Czechoslovakia, France, Greece, India, Poland, Senegal, Switzerland and Tunisia (SCN.4/WP.13 and Corr.1). No agreement was reached among delegations regarding the official working languages of the Tribunal.

Section 2. Draft financial rules and staff regulations

As regards the principles to govern the financial rules of the Tribunal and its staff regulations, it was the understanding of the Special Commission that the Secretariat would prepare the requisite documentation to be submitted to the Meeting of States Parties for its consideration (LOS/PCN/L.81, paras. 15-17).

Section 3. Initial financing and budget of the International Tribunal for the Law of the Sea

For the early functioning of the Tribunal and in order to ensure the requisite financing, it is desirable that the Meeting of States Parties determines an appropriate arrangement.

Therefore

THE PREPARATORY COMMISSION submits:

> a report with proposals concerning the initial financing and budget of the International Tribunal for the Law of the Sea prepared by the Secretariat, addendum 7 hereto, for the deliberations and determination of the Meeting of States Parties.

The working paper (SCN.4/WP.11) prepared by the Secretariat at the request of the Special Commission (LOS/PCN/L.91) was based on existing precedents and experiences in establishing international organizations. The Commission reviewed the working paper. 11/ The Special Commission decided to formulate a report with proposals concerning the initial financing and budget of the International Tribunal for the Law of the Sea, addendum 7 hereto, based on the deliberations of the Special Commission and containing relevant elements relating to the scheme for phasing in the Tribunal, as decided by the Special Commission (LOS/PCN/L.107).

CHAPTER V. THE PERMANENT HEADQUARTERS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Section 1. Recommendations concerning the location and site for the headquarters of the International Tribunal for the Law of the Sea

For the purpose of preparing for the International Tribunal for the Law of the Sea to establish its permanent headquarters at the site offered by the host country, in an appropriate environment, it is desirable that the Meeting of States Parties endorses the arrangements for the same.

Therefore

THE PREPARATORY COMMISSION, having taken note that:

> the host country, Germany, has notified the Commission that the location of the permanent headquarters of the Tribunal would be at the site offered in the Free and Hanseatic City of Hamburg, situated in the Nienstedten suburb of Hamburg-Altona (more fully described in SCN.4/L.8), conveys the same to the Meeting of States Parties.

Section 2. Recommendations concerning the building requirements and facilities of the International Tribunal for the Law of the Sea provided by the host country

For the purpose of preparing for the permanent headquarters of the International Tribunal for the Law of the Sea with the necessary facilities provided by the host country for the most effective discharge of the functions of the Tribunal, it is desirable that the Meeting of States Parties takes note of the appropriate arrangements for the same.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the Meeting of States Parties takes note of the planning and arrangements made in this connection by the host country, including the specifications provided in SCN.4/L.16 and Add.1.

The Preparatory Commission and Special Commission 4 had received reports from the host country on the designation of the site in Hamburg and the progress made in evaluating requirements and planning for the building and equipment needs of the Tribunal, including indications as to site, building, equipment and facilities being provided to the Tribunal by the host country. The relevant documents and reports reviewed and taken note of in this connection are:

(a) Preliminary information on the establishment of facilities for international courts and tribunals (SCN.4/1986/CRP.19, dated 8 April 1986);

(b) Brief progress report on the preparations for the housing of the International Tribunal for the Law of the Sea in Hamburg - submitted by the delegation of the Federal Republic of Germany (SCN.4/L.6, dated 2 September 1986);

(c) Letter dated 9 February 1987 from the Chairman of the delegation of the Federal Republic of Germany addressed to the Special Representative of the Secretary-General for the Law of the Sea (LOS/PCN/80, dated 12 March 1987);

(d) Second report on practical arrangements for the installation of the International Tribunal for the Law of the Sea at Hamburg - submitted by the delegation of the Federal Republic of Germany (SCN.4/L.8, dated 13 March 1987);

(e) Report of the Chairman on the visit by the Bureau of Special Commission 4 and officials of the United Nations Secretariat to the Federal Republic of Germany, 24-28 August 1987 (SCN.4/L.12, dated 21 March 1988);

(f) Letter dated 15 March 1989 from the Chairman of the delegation of the Federal Republic of Germany addressed to the Special Representative of the Secretary-General for the Law of the Sea (LOS/PCN/106, dated 17 March 1989);

(g) Report on the progress of work dated 13 March 1991 concerning building requirements and facilities for the International Tribunal for the Law of the Sea in Hamburg - Statement of the Parliamentary State-Secretary H.E. Mr. Rainer Funke, Ministry of Justice of the Federal Republic of Germany (SCN.4/1991/CRP.40, dated 15 March 1991);

(h) Report of the delegation of the Federal Republic of Germany on the building requirements and facilities for the International Tribunal for the Law of the Sea in Hamburg (SCN.4/L.16, dated 9 March 1992).

While these reports and the information provided do not contain precise descriptions as to furniture and equipment, the objective of the host country is to hand over a building in a state that is ready for use. This would include the equipment for heating, lighting, telephones, telefax, interpreters' booths, sanitary and electronic installations and ventilation equipment for special rooms. Storage, filing and cloakroom facilities in the relevant offices and basic furniture such as desks, filing equipment, trolleys, reception tables, soft furnishings, chairs, furniture for sittings and meeting rooms, archive and library shelving and equipment for the restaurant area are contemplated as coming within the furnished facility to be provided. It would not include such items as typewriters, copy machines and reading lights as well as special furniture, e.g., safes and private furnishings for the Caretaker's flat.

Section 3. Recommendations concerning the requirements and facilities necessary to supplement those provided by the host country

For the purpose of preparing for the permanent headquarters of the International Tribunal for the Law of the Sea with the necessary facilities in addition to those provided by the host country, it is desirable that the Meeting of States Parties makes appropriate arrangements for the same.

Therefore

THE PREPARATORY COMMISSION recommends that:

> the Meeting of States Parties, in addition to taking note of the planning and arrangements made in this connection by the host country, evaluates the needs and determines the necessary arrangements to supplement those provided by the host country.

The Preparatory Commission and Special Commission 4 received reports from the host country specifying the progress made in evaluating requirements and planning for the building and providing for the equipment needs of the Tribunal, including facilities and furnishings to be provided by it. The relevant documents and reports taken note of in this connection are identified in section 2 above. The Meeting of States Parties would have to evaluate such items of furniture and equipment to be provided by the host country as referred to therein as well as the office and data-processing equipment and other operational accessories that would need to be provided for.

CHAPTER VI. FIRST MEETING OF STATES PARTIES

Section 1. Provisional agenda and rules of procedure for the Meeting of States Parties

For the purpose of constituting the International Tribunal early to perform its central role in the settlement of disputes relating to the Law of the Sea following the entry into force of the Convention, it is desirable that the

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relevant decisions for the functioning of the Meeting of States Parties be taken and that it proceeds with the election of the members of the Tribunal.

Therefore

THE PREPARATORY COMMISSION submits:

1. The provisional agenda for the Meeting of States Parties prepared by the Secretariat, addendum 8 hereto;

2. The provisional rules of procedure for the Meeting of States Parties prepared by the Secretariat, 35/ addendum 9 hereto. It is understood that the provisional rules may be adopted for the conduct of its business and that they would be examined in due course with a view to the adoption of permanent rules of procedure for subsequent Meetings of States Parties.

Section 2. Election of the members of the Tribunal

In view of the requirement of the Convention that the first election of the members of the Tribunal shall be held within six months of the date of entry into force of this Convention, it is essential that the election should take place during the first Meeting of States Parties. The Secretary-General of the United Nations whose function it is, under article 4 of the Statute of the Tribunal, would issue the invitations to States Parties for the nomination of candidates for election as members of the Tribunal at least three months before the date of election, would prepare a list of all persons thus nominated to be submitted to States Parties within the time prescribed and would communicate the same to the Meeting of States Parties.

In connection with the geographical distribution and the representation of the principal legal systems among the members of the Tribunal in its composition and in the composition of its chambers, the Preparatory Commission expressed the view that firm and detailed rules should not be established by it. However, the principles to be applied in making such determinations would be needed. The Preparatory Commission considered it useful for relevant proposals and recommendations to be made for consideration by the Meeting of States Parties 36/ and the Secretariat was, therefore, requested to draw up a comparative table illustrating the alternatives for distribution of the six additional seats after fulfilling the minimum geographical representation requirement.

Therefore

The PREPARATORY COMMISSION submits for consideration:

a comparative table illustrating alternatives for the distribution of the six additional seats among members of the Tribunal after fulfilling the minimum geographic representation requirement, prepared by the Secretariat, addendum 10 hereto.

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Notes

1/ On 25 November 1992, the Federal Assembly of the Czech and Slovak Federal Republic adopted Constitutional Law No. 542, which terminated the existence of the Czech and Slovak Federal Republic; the law came into force on 31 December 1992. The legal successors to the Czech and Slovak Federal Republic are two sovereign States: the Czech Republic and Slovakia. The Czech Republic and Slovakia were both admitted to membership in the United Nations on 19 January 1993.

2/ The initial positions of delegations on the issues that remained unresolved are contained, inter alia, in documents CRP.20/Rev.1 and CRP.21, as well as CRP.18/Rev.3/Add.1 and 2. These documents are included in volume III.

3/ LOS/PCN/L.5 - "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", 11 April 1984 (second session).

4/ LOS/PCN/SCN.2/WP.1 - "Special Commission for the Enterprise - Mandate and programme of work", 27 February 1984 (second session).

5/ LOS/PCN/SCN.2/WP.2 - "The Enterprise - Start-up requirements and preparatory measures", 17 July 1984 (resumed second session). This document, in particular, set forth the full range of considerations.

6/ LOS/PCN/27 - "Suggestions by the Chairman adopted at the 5th Plenary Meeting of the Commission", 8 September 1983 (first session).

7/ LOS/PCN/L.40 - "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", 4 September 1986 (fourth session).

8/ Ibid.

9/ LOS/PCN/L.45 - "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", para. 5, 14 April 1986 (fourth session).

10/ LOS/PCN/L.65 - "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", 1 September 1988 (resumed sixth session) and LOS/PCN/L.70 - "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", 22 March 1989 (seventh session).

11/ LOS/PCN/L.92 - "Statement by the Chairman of the Preparatory Commission", 21 March 1991 (ninth session).

12/ LOS/PCN/BUR/R.15 - "Report of the second meeting of the Training Panel to the General Committee of the Preparatory Committee", 11 March 1992 (tenth session).

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13/ LOS/PCN/BUR/R.29 - "Report of the fourth meeting of the Training Panel to the General Committee of the Preparatory Committee", 29 March 1993 (eleventh session). LOS/PCN/TP/1993/CRP.16 - "Report on the implementation of the French Training Programme" submitted by the delegation of France, 23 March 1993 (eleventh session).

14/ LOS/PCN/L.5, para. 3, See note 3.

15/ LOS/PCN/L.40. See note 7.

16/ LOS/PCN/L.65. See note 10.

17/ LOS/PCN/L.100 - "Statement to the Plenary by the Acting Chairman of Special Commission 2 on the progress of work in that Commission", para. 4, 11 March 1992 (tenth session).

18/ In its consideration of this operational option for the Enterprise, the Special Commission reviewed a number of documents. These were:

(a) LOS/PCN/SCN.2/L.2/Rev.1 and 2 of 10 August 1984 and 21 August 1985, Revised proposal by the delegation of Austria for a "Joint Enterprise for Exploration, Research and Development in Ocean Mining (JEFERAD)", introduced at the second informal meeting during the second session;

(b) LOS/PCN/SCN.2/WP.3 - "Information note on elements of joint ventures", Working paper by the Secretariat, 21 August 1984 (resumed second session);

(c) LOS/PCN/SCN.2/WP.4 - "Proposal on joint venture", submitted by the delegations of Belgium, France, the Federal Republic of Germany, Italy, Japan, the Netherlands and the United Kingdom of Great Britain and Northern Ireland, 27 August 1984 (resumed second session);

(d) LOS/PCN/SCN.2/WP.5 - A model joint venture agreement for seabed mining", submitted by the Federal Republic of Germany, 15 October 1984 (resumed second session);

(e) LOS/PCN/SCN.2/WP.18 - "Draft basic joint venture contract: explanatory memorandum", Working paper by the Secretariat, 9 August 1990 (resumed eighth session);

(f) LOS/PCN/SCN.2/WP.18/Add.1 - "Draft basic joint venture contract", Working paper by the Secretariat, 10 August 1990 (resumed eighth session).

19/ LOS/PCN/L.10 - "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", para. 14, 4 September 1984 (resumed second session).

20/ LOS/PCN/L.20 - "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", paras. 12-14, 2 April 1985 (third session).

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21/ LOS/PCN/L.40. See note 7.

22/ Annex VI, article 4.

23/ See resolution I, para. 10; and LOS/PCN/27, annex.

24/ He served until the accession of the German Democratic Republic to the Federal Republic of Germany.

25/ The seventh session was held at Kingston, Jamaica, from 27 February 1989 to 23 March 1989.

26/ The resumed eighth session was held in New York from 13 to 31 August 1990.

27/ The tenth session was held at Kingston, Jamaica, from 24 February 1992 to 13 March 1992 and the summer meeting from 10 to 21 August 1992 in New York.

28/ References to documents of Special Commission 4 are abbreviated throughout this paper for convenience. It should be noted that they all require the prefix LOS/PCN for complete reference purposes. The documents of Special Commission 4 referred to herein are contained in their entirety in volume VI.

29/ Reflected in the Chairman's summary of discussions (to be issued).

30/ See the requirement recorded in paragraph 38 of the Final Act of the Third United Nations Conference on the Law of the Sea (Official Records of the Third United Nations Conference on the Law of the Sea, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/121).

31/ Reflected in the Chairman's summary of discussions (to be issued).

32/ Further discussions reflected in the Chairman's summary of discussions (to be issued).

33/ The deliberations and suggestions of the Special Commission are reflected in the Chairman's summary of discussions (to be issued).

34/ The further deliberations of the Special Commission are reflected in the Chairman's summary of discussions (to be issued).

35/ The Chairman's Statement to the Plenary (LOS/PCN/L.81, paras. 16 and 17).

36/ Refer SCN.4/L.1.
